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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–09–AD; Amendment 39–13651; AD 2004–06–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Defense and Space Group Model 234 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2004–06–51, which was sent previously to all known U.S. owners and operators of Boeing Defense and Space Group (Boeing) Model 234 helicopters by individual letters. This AD requires, before further flight, inspecting the upper shaft extension for a crack and modifying the aft vertical shaft assembly (assembly). Thereafter, this AD requires, before the first flight of each day, inspecting the upper shaft extension for any crack. If any crack is found during any of the inspections, replacing the assembly with an airworthy assembly is required before further flight. This amendment is prompted by the discovery of a crack in the upper shaft extension of an assembly. The actions specified by this AD are intended to detect a crack in the upper shaft extension, which could result in catastrophic failure of the assembly and subsequent loss of control of the helicopter.

DATES: Effective June 18, 2004, to all persons except those persons to whom it was made immediately effective by Emergency AD 2004–06–51, issued on March 18, 2004, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2004–SW–09–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: George Duckett, Aviation Safety Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, 1600 Stewart Ave., suite 410, Westbury, New York 11590, telephone (516) 228–7325, fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: On March 18, 2004, the FAA issued Emergency AD 2004–06–51 for the specified model helicopters, which requires, before further flight, inspecting the upper shaft extension for a crack and modifying the assembly. Thereafter, the AD requires, before the first flight of each day, inspecting the upper shaft extension for any crack. If any crack is found during any of the inspections, replacing the assembly with an airworthy assembly is required before further flight. That action was prompted by the discovery of a crack in the upper shaft extension of an assembly. The discovery was made by an operator who was in the process of troubleshooting a lateral vibration and noticed a slight wobble in the assembly when the rotors were turned by hand. The manufacturer subsequently determined that the crack initiated at an arc burn that occurred during the silver-plating process of the part. The actions specified by the AD are intended to detect a crack in the upper shaft extension, which could result in catastrophic failure of the assembly and subsequent loss of control of the helicopter.

The FAA has reviewed Boeing BV234 Service Bulletin No. 234–63–1055, Revision 2, dated March 16, 2004, which describes procedures for inspecting the inside diameter surfaces of the 114D3248 upper shaft extension of the 234D3300 aft vertical shaft assembly for cracks. The service bulletin also describes procedures for fabricating and installing an aluminum inspection plug. Further, the service bulletin provides for recurring inspections.

Since the unsafe condition described is likely to exist or develop on other Boeing Model 234 helicopters of the same type design, the FAA issued Emergency AD 2004–06–51. The AD requires, before further flight, inspecting the upper shaft extension for a crack and, if no crack is found, modifying the assembly. Thereafter, before the first flight of each day, inspecting the upper shaft extension for any crack is required. If any crack is found during any of the inspections, replacing the assembly with an airworthy assembly is required before further flight. The requirements of the AD are interim actions that are necessary until an arc-burn free replacement assembly is installed. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions previously described are required before further flight and before the first flight of each day, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 18, 2004 to all known U.S. owners and operators of Boeing Model 234 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 7 helicopters of U.S. registry. The required actions will take approximately 17½ work hours per helicopter to accomplish (4½ work hours for the initial inspection and modification, 1 work hour for each recurring inspection, and 12 work hours to replace an assembly, if necessary), at an average labor rate of $65 per work hour. Required parts will cost approximately $250,000 per assembly. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,871,257.50 (assuming $2,047.50 for each initial inspection and modification, $113,750 for 250 recurring

inspections on each helicopter, $1,755,460 to replace one assembly on each helicopter, and negligible parts costs associated with the modifications and inspections).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2004–SW–09–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–06–51 Boeing Defense and Space Group: Amendment 39–13651. Docket No. 2004–SW–09–AD.

Applicability: Model 234 helicopters, with aft vertical shaft assembly, part number (P/N) 234D3300, serial number–181 or lower with a prefix of A, installed, certificated in any category.

Compliance: Required as indicated.

To detect a crack in the upper shaft extension, which could result in catastrophic failure of the aft vertical shaft assembly and subsequent loss of control of the helicopter, accomplish the following:

Note 1: Prepare the helicopter for safe ground maintenance and disconnect the battery.

(a) Before further flight, unless accomplished previously, perform the following initial inspection and modification:

(1) Remove the screws, P/N MS51957–63 or MS51958–63, and washers, P/N AN960–D10L, from the oil tank assembly. Remove the retainer, P/N 114R2059–1, cover, P/N 14R2054–1, and packing, P/N M83248/1–264, from the oil tank assembly.

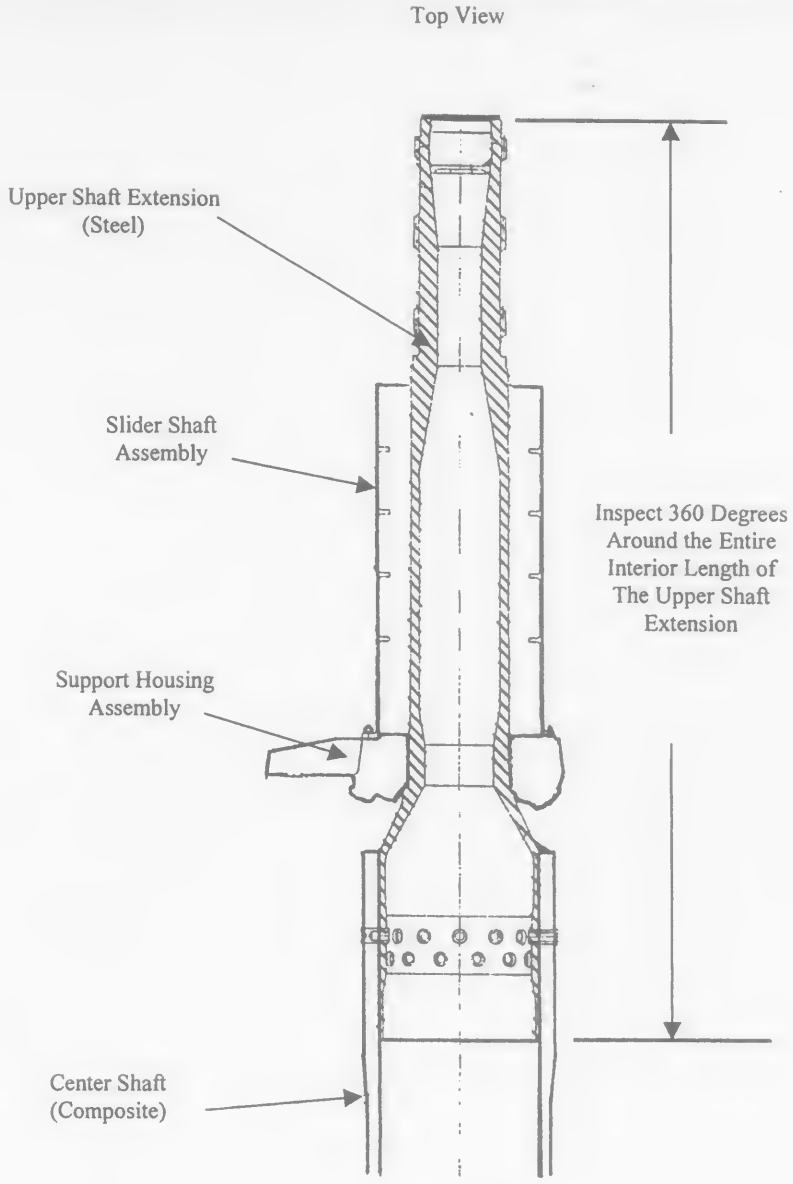
(2) Cut the sealant around the upper shaft extension plug, P/N 114D1246–1. Remove the (adhesive) sealant from the plug and the inside diameter of the upper shaft extension, P/N 114D3248, before removing the plug.

(3) Tap one side of the rubber plug, P/N 114D1246–1, with a hammer and drift to raise and offset the opposite edge of the plug. Pull the plug from the upper shaft extension.

(4) Remove any loose sealant that remains on the inside diameter of the aft vertical shaft assembly using care not to drop debris into the shaft.

(5) Inspect the upper shaft extension, P/N 114D3248, using a borescope or other lighted device that provides direct visual observation of the interior of the aft rotor shaft. Inspect 360 degrees around the entire interior length of the upper shaft extension. If any crack is found, replace the aft vertical shaft assembly, P/N 234D3300, with an airworthy assembly before further flight. See the following Figure 1 of this AD for the area to inspect:

BILLING CODE 4910–13–P



Aft Vertical Shaft
Assembly Inspection Area
Figure 1

(6) If no crack is found, using a light source, visually inspect the aft vertical shaft assembly for debris or foreign object damage (FOD) inside the diameter of the assembly.

(7) Manufacture an aluminum-threaded plug to replace the rubber plug, P/N 114D1246–1. The replacement plug is to be installed in the internal threads on the top of the upper shaft extension. Machine the plug from a block of 7050–T7451, 7075–T6 or 6061–T6, with 4.000" –16 UNS–3A threads and a minor thread diameter of 3.920". Machine a hex head to the center of the cap to aid in removal. Machine the hex head to fit a 1¼" wrench. See the following Figure 2 of this AD:

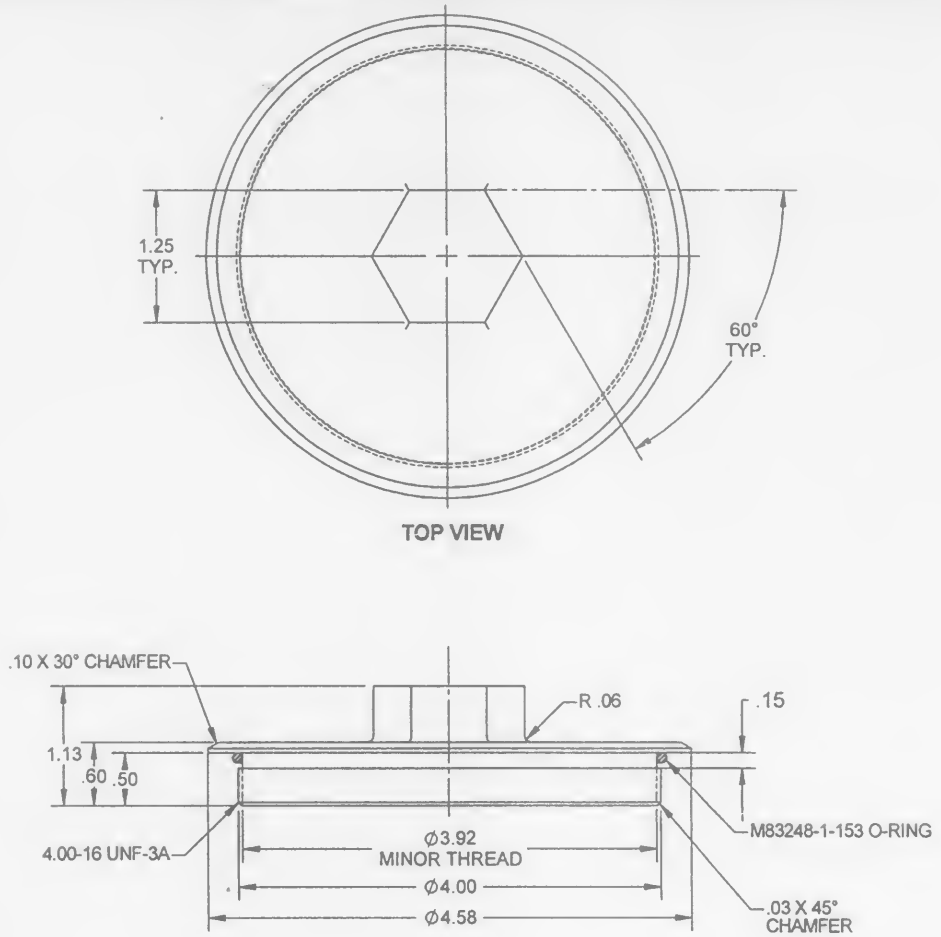


Figure 2

BILLING CODE 4910–13–C

Note 2: All dimensions stated in this AD are in inches.

(8) Install the aluminum-threaded plug with an o-ring, P/N M83248–1–153, in the internal threads on the top of the upper shaft extension (hand tighten only). Assure the safety wire for the rotor hub nut is clear of the plug.

(9) Install packing, P/N M83248/1–264, into the o-ring groove of the oil tank assembly. Install the cover, P/N 114R2054–2, retainer, P/N 114R2059–1, washer, P/N AN960D10L, and screws, P/N MS51957–63 or MS51958–63, into the oil tank assembly that is installed on the aft rotary wing head assembly. Torque screws to 23 pounds-inches dry.

(b) Before the first flight of each day, perform the following recurring inspection:

(1) Remove the screws, P/N MS51957–63 or MS51958–63, and washers, P/N AN960D10L, from the oil tank assembly. Remove the retainer, P/N 114R2059–1, cover, P/N 114R2054–1, and packing, P/N M83248/1–264, from the oil tank assembly.

(2) Remove the aluminum-threaded plug from the internal threads on the top of the upper shaft extension.

(3) Inspect the upper shaft extension, P/N 114D3248, using a borescope or other lighted device that provides direct visual observation of the interior of the aft rotor shaft. Inspect 360 degrees around the entire interior length of the upper shaft extension (see Figure 1 of this AD). If any crack is found, replace the aft vertical shaft assembly, P/N 234D3300,

with an airworthy assembly before further flight.

(4) If no crack is found, install the aluminum-threaded plug with an o-ring, P/N M83248–1–153, in the internal threads on the top of the upper shaft extension (hand tighten only). Assure the safety wire for the rotor hub nut is clear of the plug.

(5) Install packing, P/N M83248/1–264, into the o-ring groove of the oil tank assembly. Install the cover, P/N 114R2054–2, retainer, P/N 114R2059–1, washer, P/N AN960D10L, and screws, P/N MS51957–63 or MS51958–63, into the oil tank assembly that is installed on the aft rotary wing head assembly. Torque screws to 23 pounds-inches dry.

Note 3: Boeing BV234 Service Bulletin No. 234–63–1055, Revision 2, dated March 16, 2004, pertains to the subject of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, New York Aircraft Certification Office (NYACO), Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on June 18, 2004, to all persons except those persons to whom it was made immediately effective by Emergency AD 2004–06–51, issued March 18, 2004, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on May 21, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–12442 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–16070; Airspace Docket 03–ANM–05]

Establishment of Class E Airspace; Hamilton, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on March 8, 2004 (69 FR 10605), Airspace Docket 03–ANM–05.

DATES: *Effective Date:* August 5, 2004.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket 03–ANM–05, published on March 8, 2004 (69 FR 10605), established Class E airspace at Hamilton, MT. An error was discovered in the geographic coordinates for the Ravalli County Airport, Hamilton, MT, Class E airspace. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Class E airspace at Ravalli County Airport, Hamilton, MT, as published in the **Federal Register** on March 8, 2004 (69 FR 10605), are corrected as follows:

§ 71.1 [Corrected]

* * * * *

ANM UT E5 Hamilton, MT [Corrected]

Ravalli County Airport, MT
(Lat. 46°15′05″ N., long. 114°07′32″ W.)

That airspace extending upward from 700 feet above the surface of the earth within an 8 mile radius of Ravalli County Airport; that airspace extending upward from 1,200 feet above the surface of the earth bounded by a line beginning at lat. 46°42′00″ N., long. 114°11′00″ W., to lat. 46°42′00″ N., long. 113°52′00″ W., to lat. 46°19′30″ N., long. 113°52′00″ W., to lat. 45°51′30″ N., long. 114°01′00″ W., to lat. 45°51′30″ N., long. 114°11′00″ W., to lat. 46°20′00″ N., long. 114°30′00″ W.; thence to the beginning; excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on May 17, 2004.

Raul C. Treviño,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 04–12540 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 18

Appointing Authority for Military Commissions

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part establishes the position and office of the Appointing Authority for Military Commissions pursuant to the President's Military Order on the detention, treatment, and trial of certain non-citizens in the war against terrorism; and the DoD Military Commission Order No. 1. It describes the Appointing Authority's responsibilities and functions, relationships with other officials in the Department of Defense, and provides authority for the Appointing Authority to publish issuances necessary to carry out assigned responsibilities, such as supervising the military commission process, appointing military commission members, making sure that the prosecution and defense have the resources necessary to carry out their duties, approving charges against individual detainees, and approving plea agreements. It also describes the responsibilities and functions of the General Counsel of the Department of Defense, the Chairman of the Joint Chiefs of Staff, and the Secretaries of the Military Department relative to those of the Appointing Authority in the conduct of military commissions. Publication of this document benefits the public by making the military commission process transparent and demonstrating that the process is complete and fair.

DATES: This rule is effective February 10, 2004.

FOR FURTHER INFORMATION CONTACT: Major John Smith, USAF, Office of the Military Commissions or LTC John Hall, USA, Deputy Legal Advisor to the Appoint Authority.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 18 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule pertains to Department of Defense components and non citizens subject to the President's Military Order, November 13, 2001. It does not affect small entities pursuant to Section 601, Title 5 U.S.C.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 18

Military law.

■ Accordingly, title 32 of the Code of Federal Regulations, Chapter I, Subchapter B is amended to add Part 18 to read as follows:

PART 18—APPOINTING AUTHORITY FOR MILITARY COMMISSIONS

Sec.

Authority: 10 U.S.C. 113 and 131(b)(8).

§ 18.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the U.S. Constitution, Article II, Section 2, Clause 2, 10 U.S.C. 113 and 131(b)(8) and Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," (66 FR 57833 (November 16, 2001)) ("President's Military Order") this part establishes the position and office of the Appointing Authority for Military Commissions, with the responsibilities, functions, relationships, and authorities as prescribed herein.

§ 18.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, all other organizational entities in the Department of Defense (hereafter referred to collectively as "the DoD Components").

(b) Any special trial counsel of the Department of Justice who may be made available by the Attorney General of the United States to serve as a prosecutor in trials before military commissions pursuant to section 4(B)(2) of DoD Military Commission Order No. 1,[1] "Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism," March 21, 2002.

(c) Any civilian attorney who seeks qualification as a member of a pool of qualified Civilian Defense Counsel authorized in section 4(C)(3)(b) of DoD Military Commission Order No. 1; and to any attorney who has been qualified as a member of that pool.

§ 18.3 Organization.

(a) The Appointing Authority for Military Commissions is established in the Office of the Secretary of Defense under the authority, direction, and control of the Secretary of Defense.

(b) The Office of the Appointing Authority shall consist of the Appointing Authority, the Legal Advisor to the Appointing Authority, and such other subordinate officials and organizational elements as are established by the General Counsel of the Department of Defense within the resources assigned by the Secretary of Defense.

§ 18.4 Responsibilities and functions.

(a) The Appointing Authority for Military Commissions is an officer of the United States appointed by the Secretary of Defense pursuant to the U.S. Constitution and 10 U.S.C. In this capacity, the Appointing Authority for Military Commissions shall exercise the duties prescribed in DoD Military Commission Order No. 1 and this part and shall:

(1) Issue orders from time to time appointing one or more military commissions to try individuals subject to the President's Military Order and DoD Military Commission Order No. 1; and appoint any other personnel necessary to facilitate military commissions.

(2) Appoint military commission members and alternate members, based on competence to perform the duties involved. Remove members and alternate members for good cause pursuant to Military Commission Instruction No. 8.

(3) Designate a Presiding Officer from among the members of each military commission to preside over the proceedings of that military commission. The Presiding Officer shall be a military officer who is a judge advocate of any United States Armed Force.

(4) Approve and refer charges prepared by that Prosecution against an individual or individuals subject to Military Order of November 13, 2001.

(5) Approve plea agreements with an Accused.

(6) Decide interlocutory questions certified by the Presiding Officer.

(7) Ensure military commission proceedings are open to the maximum extent practicable. Decide when military commission proceedings should be closed pursuant to Military Order of November 13, 2001 and DoD Military Commission Order No. 1.

(8) Make decisions related to attendance at military commission proceedings by the public and accredited press and the public release of transcripts. Such matters, including policy and plans for media coverage shall be coordinated with the Assistant Secretary of Defense for Public Affairs (ASD(PA)) and, as appropriate, the Assistant Secretary of Defense for Special Operations/Low Intensity Conflict (ASD(SO/LIC)) under the Under Secretary of Defense for Policy (USD(P)).

(9) Approve or disapprove requests from the Prosecution and Defense to communicate with news media representatives regarding cases and other matters related to military commissions. Such matters shall be coordinated with the ASD(PA).

(10) Detail or employ personnel such as court reporters, interpreters, security personnel, bailiffs, and clerks to support military commissions, as necessary. When such details effect resources committed to operational missions, coordinate with the ASD (SO/LIC) under the USD(P) and the Heads of appropriate DoD Components.

(11) Order that such investigative or other resources be made available to Defense Counsel and the Accused ad deemed necessary for a full and fair trial, including appointing interpreters.

(12) Promptly review military commission records of trial for

[1] DoD Military Commission Orders and Instructions referenced in this Directive can be found at *http://www.dtic.mil/whs/directives/corres/mco.htm.*

administrative completeness and determine appropriate disposition, either transmitting the record of trial to the Review Panel or returning it to the military commission for any necessary supplementary proceedings.

(13) Implement directions of officials with final decision-making authority for sentences.

(14) Perform supervisory and performance evaluation duties pursuant to this part and DoD Military Commission Instruction No. 6.

(15) Coordinate matters involving members of the Congress, including correspondence, with the Assistant Secretary of Defense for Legislative Affairs; and coordinate and exchange data and information with other OSD officials, the Heads of the DoD Components, and other Federal officials having collateral or related functions.

(16) Establish, maintain, and preserve records that serve as evidence of the organization, functions, policies, decisions, procedures, operations, and other activities of the Office of the Appointing Authority for Military Commissions in accordance with Title 44 U.S.C.

(17) Perform such other functions as the Secretary of Defense may prescribe.

(b) The General Counsel of the Department of Defense shall:

(1) Review and approve such regulations, instructions, memoranda, and other DoD publications prepared by the Appointing Authority (see § 18.6(c)) for the conduct of proceedings by military commissions established pursuant to Military Order of November 13, 2001 and DoD Military Commission Order No. 1.

(2) Provide guidance and issue instructions necessary to facilitate the conduct of proceedings by military commissions established pursuant to Military Order of November 13, 2001 and DoD Military Commission Order No. 1, including but not limited to instructions pertaining to military commission-related offices, performance evaluations and reporting relationships.

(c) The Chairman of the Joint Chiefs of Staff and the OSD Principal Staff Assistants shall exercise their designated authorities and responsibilities as established by law or DoD guidance to support the Appointing Authority for Military Commissions in the implementation of the responsibilities and functions specified herein.

(d) The Secretaries of the Military Departments shall support the personnel requirements of the Appointing Authority as validated by the General Counsel of the Department of Defense and provide other requested assistance and support within their capabilities.

§ 18.5 Relationships.

(a) In the performance of assigned functions and responsibilities, the Appointing Authority for Military Commission shall:

(1) Report directly to the Secretary of Defense.

(2) Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate level of efficiency and economy.

(b) Other OSD officials and the Heads of the DoD Components shall coordinate with the Appointing Authority for Military Commissions on all matters related to the responsibilities and functions cited in § 18.4.

(c) Nothing herein shall be interpreted to subsume or replace the responsibilities, functions, or authorities of the OSD Principal Staff Assistants, the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Commanders of Combatant Commands, or the Heads of Defense Agencies or the Department of Defense Field Activities prescribed by law or Department of Defense guidance.

§ 18.6 Authorities.

The Appointing Authority for Military Commissions is hereby delegated authority to:

(a) Obtain reports and information, consistent with DoD Directive 8910.1 as necessary to carry out assigned functions.

(b) Communicate directly with the Heads of the DoD Components as necessary to carry out assigned functions, including the transmission of requests for advice and assistance. Communications to the Military Departments shall be transmitted through the Secretaries of the Military Departments, their designees, or as otherwise provided in law or directed by the Secretary of Defense in other Department of Defense issuances. Communications to the Commanders of the Combatant Commands, except in unusual circumstances, shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(c) Subject to the approval of the General Counsel of the Department of Defense, issue DoD Publications and one-time directive-type memoranda consistent with DoD 5025.1–M; Military Commission Instructions consistent with DoD Military Commission Instruction No. 1; and such other regulations as are necessary or appropriate for the conduct of proceedings by military commissions established pursuant to Military Order of November 13, 2001 and DoD Military Commission Order No. 1. Instructions to the Military Departments shall be issued through the Secretaries of the Military Departments. Instructions to the Combatant Commands, except in unusual circumstances, shall be communicated through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the Legislative Branch, members of the public, and representatives of foreign governments, as applicable, in carrying out assigned functions.

Dated: May 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12471 Filed 6–2–04; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–099]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chesapeake Bay Bridges Swim Races, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.507 during the Annual Great Chesapeake Bay Swim Event to be held on June 13, 2004. This action is necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and support vessels in the event area.

DATES: 33 CFR 100.507 will be enforced from 11:30 a.m. to 4 p.m. on June 13, 2004.

FOR FURTHER INFORMATION CONTACT: Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The Great Chesapeake Bay Swim, Inc. will sponsor the "Great Chesapeake Bay Swim Event" on the waters of the Chesapeake

Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge. Approximately 600 swimmers will start from Sandy Point State Park and swim between the spans of the William P. Lane Jr. Memorial Bridge to the Eastern Shore. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.507 will be enforced for the duration of the event. Under provisions of 33 CFR 100.507, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area as the swim progresses, when the Patrol Commander determines it is safe to do so.

Dated: May 20, 2004.

Sally Brice-O'Hara,

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

[FR Doc. 04–12539 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–100]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.515 during the National Flag Day "Pause for the Pledge" fireworks display to be held June 14, 2004, over the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.515 will be enforced from 9 p.m. to 10 p.m. on June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The National Flag Day Foundation will sponsor the National Flag Day "Pause for the Pledge" fireworks display on June 14, 2004, over the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.515 will be enforced for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: May 20, 2004.

Sally Brice-O'Hara,

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

[FR Doc. 04–12538 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04–012]

RIN 1625–AA00

Security Zone; Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to Pier Three at the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). In light of recent terrorist actions against the United States, this security zone is necessary to ensure the safe loading of military equipment and to ensure the safety of the public from potential subversive acts. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of Suisun Bay within 500 yards of Pier Three at the MOTCO facility unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective from 7 a.m. P.d.t. on May 28, 2004, to 11:59 p.m. P.d.t. on June 4, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP San Francisco Bay 04–012) and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign John Bannon, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3082.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM because the duration of the NPRM rulemaking process would extend beyond the actual period of the scheduled operations and defeat the protections afforded by the temporary rule to the cargo vessels, their crews, the public and national security.

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** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation. Delaying this rule's effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the *USS Cole* and the subsequent attack in

October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such aggression continues to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California, establish a temporary security zone in the navigable waters of the United States within 500 yards of Pier Three at the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents or criminal acts. This zone is also necessary to protect military operations from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone encompassing the navigable waters, extending from the surface to the sea floor, within 500 yards of any portion of Pier Three at Military Ocean Terminal Concord (MOTCO), California. There are three existing piers at the MOTCO facility. Originally there were four piers, numbered One through Four from west to east, but Pier One was destroyed in an explosion in 1944. Therefore, Pier Three is the middle pier of the three remaining piers. The area encompassed by this security zone includes a portion of both the Port Chicago Reach and the Roe Island Channel sections of the deepwater channel. Persons and vessels are prohibited from entering, transiting through or anchoring within this security zone unless authorized by the Captain of the Port (COTP) or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, will also face imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. If the need for this security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of the security zone and will announce that fact via Broadcast Notice to Mariners.

Regulatory Evaluation

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

Although this regulation restricts access to a portion of navigable waters, the effect of this regulation will not be significant because mariners will be advised about the security zone via public notice to mariners, and the zone will encompass only a small portion of the waterway for a short duration. In addition, vessels and persons may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

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 and operators of vessels intending to anchor or transit to or from Suisun Bay via the Port Chicago Reach section of the channel. Although the security zone will occupy a section of the navigable channel (Port Chicago

Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels may receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing will have ample space outside of the security zone to engage in those activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of 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).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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 § 165.T11–017 to read as follows:

§ 165.T11–017 Security Zone; Navigable Waters of the United States Surrounding Pier Three at Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, within 500 yards of any portion of Pier Three at Military Ocean Terminal Concord (MOTCO), California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of this security zone may contact the Patrol Commander on scene on VHF–FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all

persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Effective period.* This section becomes effective at 7 a.m. p.d.t. on May 28, 2004, and terminates at 11:59 p.m. p.d.t on June 4, 2004. If the need for this security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of the security zone and will announce that fact via Broadcast Notice to Mariners.

Dated: May 25, 2004.

Steven J. Boyle,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–12537 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0041; FRL–7361–3]

Streptomyces lydicus WYEC 108; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the microbial pesticide *Streptomyces lydicus* WYEC 108 on all agricultural commodities when applied/used in accordance with label directions. Natural Industries, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Streptomyces lydicus* WYEC 108.

DATES: This regulation is effective June 3, 2004. Objections and requests for hearings must be received on or before August 2, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP–2004–0041. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall#2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0515; e-mail address: *reynolds.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production/agriculture (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturer (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

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

II. Background and Statutory Findings

In the **Federal Register** of August 1, 2000 (65 FR 46912) (FRL –6595–4), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 0F6163) by Natural Industries, Inc., 6223 Theall Road, Houston, TX 77066. This notice included a summary of the petition prepared by the petitioner Natural Industries, Inc. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of the microbial pesticide *Streptomyces lydicus* WYEC 108.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food,

drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

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

Streptomyces lydicus WYEC 108 is a common, well-characterized, naturally-occurring soil bacterium. It has been researched extensively in both the laboratory and under field conditions and has been described in scientific literature for over 45 years. The results of the acute toxicology and pathogenicity studies required of the petitioner under FFDCA section 408(d)(2)(A) in support of the petition for an exemption from the requirement of a tolerance for *Streptomyces lydicus* WYEC 108 indicate that the bacterium is non-toxic, non-irritating, and non-pathogenic.

Tests performed by Natural Industries, Inc. cited in support of this Food Tolerance Exemption Petition are summarized below.

1. *Acute oral toxicity* - Rat (OPPTS Harmonized Guideline 870.1100) MRID 451117–01.

Test Material: Actinovate Soluble.

Test Dose: 5,050 mg/per/kg, CFU not measured.

Result: No mortality, LD_{50} > 5,050 mg/per/kg; no observable abnormalities on necropsy, and minor clinical signs (piloerection in all 3 males at 24 hours, diarrhea in 1 female each at 1 and 2 hours and soft feces in 1 male at 4 hours) with complete symptom clearance by day 2. (J. Gagliardi/J. Kough memorandum to A. Reynolds, 1/14/04 (hereafter referred to as BPPD Review - 1/14/04)).

2 *Acute pulmonary toxicity/pathogenicity* - Rat (OPPTS Harmonize Guideline 885.3150) MRID 451117–02.

Test Material: *Streptomyces lydicus* WYEC 108 (TGAI).

Test Dose: 9.1 x 10^8 CFU per animal, plus an inactivated control.

Result: No mortality, LD_{50} > 9.1 x 10^8 CFU per animal; inactivated control produced slight piloerection in all animals; *Streptomyces lydicus* WYEC 108 produced piloerection plus crust on eyes, walking on tiptoe, and one female with raspy breathing. Necropsy showed no abnormalities and WYEC 108 cleared from all tissues by 28 days (BPPD Review - 1/14/04).

3. *Acute injection toxicity/pathogenicity* - Rat (OPPTS Harmonize Guideline 885.3200) MRID 451117–03.

Test Material: *Streptomyces lydicus* WYEC 108 (TGAI).

Test Dose: 9.33 x 10^8 CFU per animal, plus an inactivated control.

Result: No mortality, LD_{50} >9.33 x 10^8 CFU per animal; inactivated control and *Streptomyces lydicus* WYEC 108 produced no clinical symptomology with no observable abnormalities on necropsy, though one control male had an enlarged/hardened abdomen and also one control male had an enlarged and mottled spleen and liver(BPPD Review - 1/14/04).

4. *Hypersensitivity incidents (OPPTS Harmonize Guideline.* 885.3400). The registrant reported (April 24, 2000) no incidents to date. Nonetheless, the registrant is required to report to the Agency any future incidents of hypersensitivity associated with *Streptomyces lydicus* WYEC 108 pursuant to FIFRA section 6(a)(2).

5. *Data Waivers:* In addition to the data summarized above, the following required studies were waived for *Streptomyces lydicus.*

i. *Acute oral toxicity/pathogenicity (OPPTS 885.3050).* An acceptable acute oral toxicity study (870.1100) was submitted by the registrant (discussed above). This study showed no mortality or abnormalities among the orally-dosed rats (Toxicity Category IV). In addition, toxicity/pathogenicity studies were conducted on the most likely route of human exposure, pulmonary, and the most sensitive route of exposure, intravenous injection, to determine whether or not the material is toxic, pathogenic, or infective to mammals. Both of those studies were acceptable and demonstrated a lack of toxicity and pathogenicity from *Streptomyces lydicus* WYEC 108 to the test animals. Therefore, the data waiver request for acute oral toxicity/pathogenicity testing was granted (J. Gagliardi/J. Kough memorandum to A. Reynolds, 5/21/03 (hereafter referred to as BPPD Review - 5/21/03).

ii. *Acute dermal toxicity/pathogenicity (OPPTS 885.3100).* The registrant has submitted acceptable acute oral toxicity, acute pulmonary toxicity/pathogenicity, acute injection toxicity/pathogenicity, primary eye irritation, and primary dermal irritation studies that demonstrate the lack of toxicity, pathogenicity, infectivity, and irritation for the active ingredient, *Streptomyces lydicus* WYEC 108 (see discussions above). As such, the data waiver request for acute dermal toxicity/pathogenicity testing was granted (J. Gagliardi/J. Kough memorandum to A. Reynolds, 2/11/04).

iii. *Acute inhalation toxicity (OPPTS 870.1300).* The registrant submitted an acceptable acute pulmonary toxicity/pathogenicity study (see discussion above) that demonstrated no toxicity, pathogenicity, or infectivity associated with the active ingredient, *Streptomyces lydicus* WYEC 108. The inert ingredients in the end-use product are not expected to increase the pathogenicity or toxicity of the TGAI. As such, the data waiver request for acute inhalation toxicity testing was granted (BPPD Review - 5/21/03).

iv. *Hypersensitivity study (OPPTS 870.2600).* The registrant has reported that there have been no hypersensitivity incidents during production and testing of *Streptomyces lydicus* WYEC 108 (TGAI or end use product). In addition, the submitted toxicity and irritation studies (as discussed above) have shown minimal toxicity and/or irritation potential for *Streptomyces lydicus* WYEC 108. The registrant is required to also report any adverse incidents to the Agency under FIFRA section 6(a)(2). Therefore, the data waiver request for the hypersensitivity study was granted (BPPD Review - 5/21/03).

v. *Immune response (OPPTS 885.3800).* The submitted acute injection toxicity/pathogenicity study (as discussed above) demonstrated that *Streptomyces lydicus* WYEC 108 is cleared by the immune system from the bodies of the test animals. Therefore, the data waiver request for immune response testing was granted (BPPD Review - 5/21/03).

Based on the data generated in accordance with the Tier I data requirements set forth in 40 CFR 158.740(c), the Tier II and Tier III data requirements were not triggered and, therefore, not required in connection with this action. In addition, because the Tier II and Tier III data requirements were not required, the residue data requirements set forth in 40 CFR 158.740(b) also were not required.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Humans and animals are commonly exposed to *Streptomyces lydicus*, a common and naturally-occurring soil-inhabiting bacterium. No toxicological endpoints were identified for *Streptomyces lydicus* WYEC 108. The low toxicity and non-pathogenicity of *Streptomyces lydicus* WYEC 108 is demonstrated by the data summarized in Unit III above.

1. *Food.* The method of application for *Streptomyces lydicus* WYEC 108 is a soil mix/drench to potted plants and turf grass or as a foliar application to greenhouse crops. As such, there may be plant residues of *Streptomyces lydicus* WYEC 108 and dietary exposure on agricultural commodities. However, negligible to no risk is expected for the general population, including infants and children, because *Streptomyces lydicus* WYEC 108 demonstrated no pathogenicity or oral toxicity at the maximum doses tested (as noted in Unit III above).

2. *Drinking water exposure.* *Streptomyces lydicus* WYEC 108 is found naturally in soil, but does not thrive in aquatic environments. There are also no aquatic use sites for the pesticide, so exposure in drinking water is not expected. In addition, there is no evidence of adverse effects from oral, dermal, or inhalation exposure to this microbial agent (see Unit III above). Accordingly, the use of *Streptomyces lydicus* WYEC 108 on terrestrial plants is not expected to negatively impact the quality of drinking water.

B. Other Non-Occupational Exposure

Based on the proposed agricultural and horticultural use patterns, the potential for non-dietary exposure to *Streptomyces lydicus* WYEC 108 residues for general population, including infants and children, is unlikely. In addition, adults are required to wear personal protective equipment during application to mitigate any exposure. Accordingly, the Agency believes that the potential aggregate non-occupational exposure, derived from dermal and inhalation exposure through the application of *Streptomyces lydicus* WYEC 108, should fall well below the currently tested microbial safety standards.

The potential for dermal or inhalation exposure to *Streptomyces lydicus* WYEC 108 pesticide residues for the general population, including infants and children, is unlikely because the potential use sites are agricultural and horticultural. However, since *Streptomyces lydicus* is a common, naturally-occurring soil bacterium, there is a great likelihood of prior exposure for most, if not all individuals. Accordingly, the increase in exposure due to this proposed microbial pesticide would be negligible. Furthermore, as demonstrated in Unit III above, the organism is essentially non-irritating (Toxicity Category IV) and the acute pulmonary toxicity/pathogenicity testing performed on *Streptomyces lydicus* WYEC 108 demonstrated no pathogenicity or toxicity. As such, the risks anticipated for these routes of exposure are considered minimal.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires the Agency, when considering whether to establish, modify, or revoke a tolerance, to consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." These considerations include the possible cumulative effects of such residues on infants and children. The Agency has considered the potential for cumulative effects of *Streptomyces lydicus* WYEC 108 and other substances in relation to a common mechanism of toxicity. As demonstrated above, *Streptomyces lydicus* WYEC 108 is non-toxic and non-pathogenic to mammals. Because no mechanism of pathogenicity or toxicity in mammals has been identified for this organism (see Unit III above), no cumulative effects from the residues of this product with other related microbial pesticides are anticipated.

VI. Determination of Safety for U.S. Population, Infants and Children

There is a reasonable certainty that no harm to the U.S. population, including infants and children, will result from aggregate exposure to residues of *Streptomyces lydicus* WYEC 108 due to its use as a microbial pest control agent. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed in Unit III above, *Streptomyces lydicus* WYEC 108 is not pathogenic or infective and is non-toxic to mammals. Accordingly, exempting *Streptomyces lydicus* WYEC 108 from the requirement of a tolerance should be considered safe and pose no significant risks.

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety), which often are referred to as uncertainty factors, are incorporated into EPA risk assessment either directly or through the use of a margin of exposure analysis or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk. Because *Streptomyces lydicus* WYEC 108 is a common, naturally-occurring bacterium, residues of this microbial pesticide in or on agricultural commodities are not expected to significantly increase exposure to the U.S. population, including infants and children. In addition, actual exposures to adults and children through diet are expected to be several orders of magnitude less than the doses used in the toxicity and pathogenicity tests referenced in Unit III above. Thus, the Agency has determined that the additional margin of safety is not necessary to protect infants and children, and that not adding any additional margin of safety will be safe for infants and children.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the screening program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, *Streptomyces lydicus* WYEC 108 may be subjected to additional

screening and/or testing to better characterize effects related to endocrine disruption.

The submitted toxicity/pathogenicity studies indicated that following several routes of exposure, the immune systems of the tested animals were not compromised and that they were able to clear the active ingredient (see Unit III above). Based on the available data, there is no current evidence that *Streptomyces lydicus* WYEC 108 acts as a hormone or endocrine disruptor, or that it produces toxins or secondary metabolites that would cause mammalian toxicity, pathogenicity, or irritation. Thus, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this Final Rule for *Streptomyces lydicus* WYEC 108.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including *Streptomyces lydicus* WYEC 108's lack of mammalian toxicity. *Streptomyces lydicus* WYEC 108 is a common and naturally-occurring soil-inhabiting bacterium. There is a great likelihood of prior exposure for most, if not all individuals and the increase in exposure due to this proposed microbial pesticide would be negligible. For these reasons, the Agency has concluded that an analytical method is not required for enforcement purposes for *Streptomyces lydicus* WYEC 108.

C. Codex Maximum Residue Level

There is no Codex Alimentarium Commission Maximum Residue Level for *Streptomyces lydicus* WYEC 108.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0041 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 2, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 –0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0041, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications " is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ≥ "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 24, 2004.

Jim Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1253 is added to subpart D to read as follows:

§ 180.1253 Streptomyces lydicus WYEC 108; Exemption from the Requirement of a Tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Streptomyces lydicus* WYEC 108 when used in or on all agricultural commodities when applied/used in accordance with label directions.

[FR Doc. 04–12558 Filed 6–2–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket Nos. 02–34 and 02–54, FCC 03–102]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document corrects errors in the rule changes published in the **Federal Register** of August 27, 2003, regarding reform of space station licensing procedures.

DATES: Effective June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Stephen Duall, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–1103 or via the Internet at *Stephen.Duall@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document corrects errors in § 25.146 of the Commission's rules. The Commission published a document in the **Federal Register** of August 27, 2003,

(68 FR 51499), that, among other things, was intended to eliminate the Commission's space station "anti-trafficking" prohibitions. These "anti-trafficking provisions" proscribed the sale of bare space station licenses for profit and were codified in various sections of part 25 of the Commission's rules. To implement the elimination of the anti-trafficking provisions, the Commission indicated it would remove and reserve paragraph (i) of § 25.146, which contained the anti-trafficking prohibitions for non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) in the 10.7 GHz to 14.5 GHz band (as used herein, "Ku-band").

Prior to this change taking effect, however, the Commission published a separate document in the **Federal Register** of July 25, 2003, (68 FR 43946), that amended § 25.146 by adding a new paragraph (g) and by re-designating paragraphs (g) through (m) as paragraphs (h) through (n). As a result, "old" § 25.146(h) was re-designated as "new" § 25.146(i), and "old" § 25.146(i) was re-designated as "new" § 25.146(j). Therefore, when the Commission subsequently removed and reserved § 25.146(i), it did not eliminate the text of anti-trafficking provisions for the Ku-band NGSO FSS service, but rather erroneously eliminated the text of rules concerning additional informational requirements for the Ku-Band NGSO FSS that had been previously contained in "old" § 25.146(h). The text of the anti-trafficking provisions inadvertently remained a part of the Code of Federal Regulations as "new" § 25.146(j) of the Commission's rules. This document corrects these errors.

List of Subjects in 47 CFR Part 25

Satellites.

■ Accordingly, 47 CFR part 25 is corrected by making the following correcting amendments:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–704. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 322 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.146 is amended by revising paragraph (i) and removing and reserving paragraph (j) to read as follows:

§ 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

* * * * *

(i) In addition to providing the information specified in § 25.114, each NGSO FSS applicant shall provide the following:

(1) A demonstration that the proposed system is capable of providing fixed-satellite services on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, U.S.; and

(2) A demonstration that the proposed system be capable of providing fixed-satellite services to all locations as far north as 70 deg. latitude and as far south as 55 deg. latitude for at least 75 percent of every 24-hour period; and

(3) Sufficient information on the NGSO FSS system characteristics to properly model the system in computer sharing simulations, including, at a minimum, NGSO hand-over and satellite switching strategies, NGSO satellite beam patterns, NGSO satellite antenna patterns and NGSO earth station antenna patterns. In particular, each NGSO FSS applicant must explain the switching protocols it uses to avoid transmitting while passing through the geostationary satellite orbit arc, or provide an explanation as to how the power-flux density limits in § 25.208 are met without using geostationary satellite orbit arc avoidance. In addition, each NGSO FSS applicant must provide the orbital parameters contained in Section A.3 of Annex 1 to Resolution 46. Further, each NGSO FSS applicant must provide a sufficient technical showing to demonstrate that the proposed non-geostationary satellite orbit system meets the power-flux density limits contained in § 25.208, as applicable, and

(4) A description of the design and operational strategies that it will use, if any, to mitigate orbital debris. Each applicant must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

(j) [Removed and Reserved].

* * * * *

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–12606 Filed 6–2–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[DOT Docket No. FMCSA–02–13589]

RIN 2126–AA80

Parts and Accessories Necessary for Safe Operation; Fuel Systems

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA revises the requirements concerning fuel tank fill rates for gasoline- and methanol-fueled light-duty vehicles contained in Subpart E of the Federal Motor Carrier Safety Regulations (FMCSRs). The purpose of the rule is to: Remove a conflict between the fuel tank fill rate requirements of the FMCSRs and those of the Environmental Protection Agency for gasoline and methanol-fueled vehicles up to 14,000 pounds (lbs) Gross Vehicle Weight Rating (GVWR); and to make permanent the terms of the exemptions previously granted to motor carriers operating certain gasoline-fueled commercial motor vehicles (CMVs) manufactured by Ford Motor Company (Ford) and by General Motors (GM). The FMCSA also incorporates into the FMCSRs previously issued regulatory guidance concerning the applicability of the agency's fuel tank rules to vehicles subject to the National Highway Traffic Safety Administration (NHTSA) fuel system integrity standard at the time of manufacture.

DATES: This rule is effective July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 393.67(c)(7)(ii) of Title 49, Code of Federal Regulations (CFR), requires the fill pipe and vents of a CMV with a fuel tank of more than 25 gallons capacity to permit the tank to be filled at a rate of at least 20 gallons per minute (gpm) without fuel spillage. Section 393.67(f)(2) and (f)(3) require that liquid fuel tanks be marked with the manufacturer's name and display a

certification label that the tank conforms to all applicable rules in § 393.67.

Ford and GM Requests for Exemption

Ford and GM manufacture gasoline-fueled vehicles that are based on a "light-truck" platform. The load- or passenger-carrying capabilities of these vehicles place them within the weight- or passenger-carrying thresholds of the FMCSRs. The fuel tanks of these vehicles are mounted between the frame rails and the fill pipe system is routed to minimize its exposure in the event of a crash. Because of the design characteristics of the fuel fill-pipe and system and the vapor generated when filling such tanks with gasoline, Ford and GM found that the fuel systems in the gasoline versions of these light-duty vehicles could not meet the FMCSA requirement for the 20 gallon per minute fill rate, and thus also could not display the required certification label. Both companies filed applications for limited exemptions from these fuel system requirements in 1999.

On August 10, 1999, the FMCSA (then, part of the Federal Highway Administration), published a Notice of Intent to grant Ford's application for exemption (64 FR 43417). The agency granted Ford's request on December 20, 1999 (64 FR 71184). In that notice (at 71185), the agency noted that the 20 gallon per minute rate, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are allowed to dispense fuel.

The FMCSA published a notice of intent on November 2, 2001 (66 FR 55727), to renew Ford's exemption and renewed it on December 27, 2001 (66 FR 66970). On the same day, FMCSA published a Notice of Intent to extend the exemption to additional Ford vehicles of similar design (66 FR 66971). The agency granted that exemption on March 27, 2002 (67 FR 14765).

The chronology for the GM vehicles was similar. On December 20, 1999, the FMCSA published a Notice of Intent to grant GM's application for exemption (64 FR 71186). The agency granted GM's petition on April 26, 2000 (65 FR 24531). The FMCSA published a notice of intent to renew the exemption on December 27, 2001 (66 FR 66972). It was renewed on March 27, 2002 (67 FR 14764).

Related EPA Regulations

Between 1993 and 2000, the EPA issued four final rules under Title 40 of the CFR relevant to the fuel-tank fill rate issue. They address the reduction of emissions from vehicle fueling, through controls on the dispensing rate of gasoline and methanol pumps. This involves the rate at which gasoline and methanol fuels can be accepted into the tanks of certain vehicles, the ability of the vehicle fuel systems to safely handle vapors released during fueling, and the ability of the fuel systems to safely prevent any spitback of fuel during the fueling process. In brief, these rules set a maximum dispensing rate of 10 gallons (37.9 liters) per minute (gpm) for most gasoline and methanol pumps, require a fuel-dispensing spitback test for certain 1996 and later model year light-duty vehicles and engines, and specify requirements for controlling vehicle refueling emissions through the use of vehicle-based systems (that is, on-board vapor recovery (ORVR) systems). The changes in the EPA regulation created an inconsistency between the fuel tank fill rate requirements of FMCSA and those of the EPA.

The EPA's requirements on fuel-dispensing rates for gasoline and methanol pumps are meant to ensure that while vehicles are being fueled, they would not experience spitback as the result of being fueled at rates higher than their fuel system designs can accommodate. The 10 gpm maximum fuel-dispensing rate is an inherent design parameter for vehicles designed to meet ORVR emission standards. If they were to be refueled at dispensing rates above 10 gpm, they would likely exceed ORVR emissions standards because the vehicle's carbon canister is not designed to adsorb hydrocarbon vapors satisfactorily at these higher dispensing rates. In contrast, the FMCSRs require these vehicles to be capable of receiving fuel at twice the maximum rate that these pumps are allowed to dispense fuel by EPA regulations. The FMCSA believes that the other existing regulatory requirements, including a restricted fuel-pump dispensing rate, fuel fill rate for many (if not most) of these light-duty vehicles and light-duty trucks, plus required spitback and on-board refueling tests adequately address the safety of fueling these vehicles.

FMVSS 301 Requirements

In addition to the revision to the fuel tank fill rate requirements, FMCSA proposed to place in the FMCSRs previously published FMCSA regulatory guidance concerning the applicability of Federal Motor Vehicle Safety Standard (FMVSS) 301 (Fuel System Integrity) to CMVs that have a Gross Vehicle Weight Rating (GVWR) of 10,000 lbs or less. In addition to the concern raised about the Ford and GM vehicles, there is another family of vehicles that fall under the definition of CMV: passenger vehicles designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce, and similar vehicles carrying placardable amounts of hazardous materials. The existing regulatory guidance, published on April 4, 1997 (65 FR 16369, at 16417), states that FMVSS 301 adequately addresses the fuel systems of such placarded motor vehicles with a GVWR of less than 10,001 pounds, and that compliance with Subpart E of part 393 would be redundant. However, commercial motor vehicles that are not covered by FMVSS 301 must continue to comply with Subpart E of Part 393. Thus, motor vehicles that meet the fuel system integrity requirements of 49 CFR 571.301 would be exempt from the requirements of FMCSA Subpart E of Part 393.

Discussion of Comments

FMCSA published a Notice of Proposed Rulemaking (NPRM) on November 12, 2003 (68 FR 64072). Two organizations provided comments to the docket.

The National Automobile Dealers Association supported the proposal, particularly the reference to the FMVSS 301 requirements.

Ford Motor Company requested FMCSA consider a simplified reference to the Ford vehicles that would be covered by the exemption. Ford vehicles with a GVWR over 10,000 pounds are all identified with the letters A, K, L, M, N, W, or X in the fourth position of the Vehicle Identification Number (VIN). Ford suggested that specifying the identification in this way would also be consistent with the method of identification proposed for the exempted GM vehicles. Ford also asked FMCSA to revise the text of the proposed rule to indicate that vehicles exempted under the fuel tank fill rate requirement of § 393.67(f) are not required to bear the label required under § 393.67(f)(1) through § 393.67(f)(3), and also to clarify that the exemption applies to vehicles manufactured before and after the effective date of the proposed rule.

FMCSA Response

In the NPRM, FMCSA had used the identifications provided by Ford in its requests for exemption. FMCSA will revise the identification method in § 393.67(f)(4) as Ford has recommended.

Concerning Ford's comment on the labeling requirements, the revision to § 393.67(a)(7) states that motor vehicles that meet the fuel system integrity requirements of FMVSS 301 are exempt

from the requirements of Subpart E of the FMCSRs—that is, §§ 393.65 through 393.69—as they apply to the vehicle's fueling system. The general reference to 49 CFR 571.301 covers compliant gasoline-fueled vehicles built after the effective date of the final rule. Because a regulation can only apply prospectively, it is necessary to identify those vehicles that were previously exempted from the fuel tank certification and marking requirements.

Rulemaking Analyses And Notices

Regulatory Notices

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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

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

The FMCSA has determined that this regulatory action is not significant within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the DOT.

This rule would revise the regulations concerning the fuel systems of certain light-duty vehicles used as CMVs. First, it excludes certain light-duty vehicles that are required to comply with the FMVSS 301 fuel system integrity requirements, from FMCSR fuel system integrity requirements. Second, it revises the requirements of § 393.67, Fill pipe, to bring them into conformity with EPA regulations. The FMCSA believes these changes will simplify motor carriers' ability to comply with the FMCSRs, and would not diminish the safe operation of these vehicles.

Based on the information presented here, FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Unless a motor carrier operates pumps that are used exclusively to fuel heavy-duty vehicles, motor carriers have been required to comply with the limitation on fueling rate since January 1, 1998.

Under provisions of The National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") (49 U.S.C. 30101, *et seq.*, codified at 49 U.S.C. 30112) and NHTSA's implementing regulations, vehicles must be certified to meet all applicable FMVSSs at the time of their manufacture. Since the fuel systems of vehicles 10,000 lbs GVWR or less are required to comply with FMVSS 301, there is no need for the FMCSA to require a separate fuel certification label on the fuel tanks of these vehicles.

This rulemaking imposes no requirements that would generate new costs for motor carriers. Those entities would see no change to their operations, provided they ensure that their CMVs with GVWRs of up to 10,000 pounds already comply with FMVSS 301, and their gasoline- and methanol-fueled CMVs comply with the applicable EPA regulations. This rulemaking will also harmonize the fuel system integrity requirements of FMCSA with those of the NHTSA and the EPA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FMCSA has evaluated the effects of this rule on small entities. Motor carriers will not be subject to any new requirements under this proposal. Generally, they only have access to vehicles that comply with the FMVSSs and the EPA requirements. As a result, motor carriers may incur only minimal new costs, considerably less than the guideline of $100 million or more in any one year.

Therefore, the FMCSA has determined that this regulatory action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children.

The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045. First, this final rule is not economically significant under Executive Order 12866. Second, the agency has no reason to believe that the rule will result in an environmental health risk or safety risk that would disproportionately affect children. The vehicles that are the subject of this rulemaking are required to comply with both NHTSA and EPA standards concerning fuel system integrity and fuel tank fill rate. The agency has determined that the rule would have no significant environmental impacts.

Executive Order 12630 (Taking of Private Property)

This rule will revise the FMCSRs concerning fuel system integrity and fuel tank fill rate, as they apply to gasoline-fueled CMVs, to bring them into conformance with current NHTSA and EPA regulations. It will also make permanent the exemptions previously granted at the request of Ford and GM.

No new action is required on the part of those motor carriers that currently operate or plan to operate on U.S. highways, because these vehicles are already required to comply with the NHTSA and EPA requirements referenced in this final rule. In accordance with the provisions of the final rule, motor carriers operating vehicles on or after that rule's effective date, in compliance with the NHTSA and EPA requirements will no longer need to apply for an exemption.

The FMCSA therefore has determined that this final rule has no taking implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

These changes to the FMCSRs would not directly preempt any State law or regulation. They will not impose additional costs or burdens on the States. Although the States are required to adopt part 393 as a condition for receiving Motor Carrier Safety Assistance Program grants, the additional training and orientation that would be required for roadside enforcement officials will be minimal, and it would be covered under the

existing grant program. Also, this action will not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action will not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and our environmental procedures Order 5610.1C (published in the March 1, 2004 **Federal Register** at 69 FR 9680 with an effective date of March 30, 2004). We have determined that an Environmental Impact Statement is not necessary based upon the information contained in the Environmental Assessment (EA). That determination is reflected in the Finding of No Significant Impact (FONSI). A copy of the EA and the FONSI are contained in the public docket.

We have also analyzed this rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it involves policy development and civil enforcement activities, such as, investigations, inspections, examinations, and the training of law enforcement personnel. *See* 40 CFR 93.153(c)(2). It will not result in any emissions increase nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* threshold levels. Moreover, it is reasonably foreseeable that the rule change will not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers.

This action involves: (1) A revision of the FMCSR CMV fuel fill rate requirements to align them with those of the EPA for gasoline and methanol-fueled vehicles up to 14,000 lbs GVWR; (2) making permanent the terms of the exemptions previously granted to motor carriers operating certain gasoline-fueled CMVs manufactured by Ford and by GM; and (3) incorporating into the FMCSRs previously issued regulatory guidance concerning the applicability of the agency's fuel tank rules to vehicles subject to the NHTSA fuel system integrity standard at the time of manufacture.

The revision to the FMCSRs will not cause a change in EPA regulations, nor will it require a change in the design, operation, or fueling of these vehicles. It simply acknowledges the existence of a different set of fuel fill-rate regulations for gasoline- and methanol-fueled vehicles, promulgated by the EPA to improve air quality by reducing vapor emissions from refueling, which were not considered at the time the fuel tank fill rate provision was added to the FMCSRs in 1952. The rule will also make permanent the exemptions previously granted to motor carriers operating certain gasoline-fueled CMVs manufactured by Ford and GM which comply with the EPA regulations applicable to them. Finally, the rule explicitly acknowledges these vehicles' compliance with FMVSS 301, thus eliminating redundancy with NHTSA regulations.

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 likely to have a significant adverse effect on the supply, distribution, or use of energy. It revises the regulations concerning fuel system integrity and fuel tank fill rate, as they apply to gasoline-fueled CMVs, for consistency with current NHTSA and EPA regulations. It has no direct relation to energy consumption. 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.

Unfunded Mandates

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*). The FMCSA merely implements a regulation that is inherently a design requirement for the vehicle and does not lend itself to roadside verification. Persons performing inspections at the roadside will probably receive orientation on this final rule as part of their regular in-service training. However, they will not be trained, equipped, or expected to check fuel tank fill rates at the roadside. Also, since the FMCSA is codifying an existing exemption that had already been provided for light-duty CMVs with certain VINs, the agency anticipates that minimal, if any, additional training would be required. The inspectors would only need to refer to a reference card listing those grandfathered VINs. To the extent that States incur costs due to implementation of this proposal, they will be minimal and covered under the existing MCSAP grant program.

List of Subjects in 49 CFR Part 393

Highway and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

■ In consideration of the foregoing, the FMCSA amends title 49 CFR, chapter III, subchapter B, part 393 as follows:

PART 393—[AMENDED]

■ 1. The authority citation for part 393 continues to read as follows:

Authority: Sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

■ 2. Section 393.67 is amended by adding new paragraphs (a)(7) and (f)(4), and revising paragraph (c)(7) to read as follows:

§ 393.67 Liquid Fuel Tanks.

(a) * * *

(7) Motor vehicles that meet the fuel system integrity requirements of 49 CFR 571.301 are exempt from the requirements of this subpart, as they apply to the vehicle's fueling system.

* * * * *

(c) * * *

(7) *Fill pipe.* (i) Each fill pipe must be designed and constructed to minimize the risk of fuel spillage during fueling operations and when the vehicle is involved in a crash.

(ii) For diesel-fueled vehicles, the fill pipe and vents of a fuel tank having a capacity of more than 94.75 L (25 gallons) of fuel must permit filling the tank with fuel at a rate of at least 75.8 L/m (20 gallons per minute) without fuel spillage.

(iii) For gasoline- and methanol-fueled vehicles with a GVWR of 3,744 kg (8,500 pounds) or less, the vehicle must permit filling the tank with fuel dispensed at the applicable fill rate required by the regulations of the Environmental Protection Agency under 40 CFR 80.22.

(iv) For gasoline- and methanol-fueled vehicles with a GVWR of 14,000 pounds (6,400 kg) or less, the vehicle must comply with the applicable fuel-spitback prevention and onboard refueling vapor recovery regulations of the Environmental Protection Agency under 40 CFR part 86.

(v) Each fill pipe must be fitted with a cap that can be fastened securely over the opening in the fill pipe. Screw threads or a bayonet-type point are methods of conforming to the requirements of paragraph (c) of this section.

* * * * *

(f) * * *

(4) *Exception.* The following previously exempted vehicles are *not* required to carry the certification and marking specified in paragraphs (f)(1) through (3) of this section:

(i) Ford vehicles with GVWR over 10,000 pounds identified as follows: The vehicle identification numbers (VINs) contain A, K, L, M, N, W, or X in the fourth position.

(ii) GM G-Vans (Chevrolet Express and GMC Savanna) and full-sized C/K trucks (Chevrolet Silverado and GMC Sierra) with GVWR over 10,000 pounds identified as follows: The VINs contain either a "J" or a "K" in the fourth position. In addition, the seventh position of the VINs on the G-Van will contain a "1."

Issued on: May 26, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–12498 Filed 6–2–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574, 575, and 597

[Docket No. NHTSA–04–17917]

RIN 2127–AJ36

Tire Safety Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration requesting changes to the final rule published on November 18, 2002 (November 2002 final rule). That final rule adopted new and revised tire safety information provisions in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. Specifically, the November 2002 final rule established a new Federal Motor Vehicle Safety Standard requiring improved labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. Further, the rule required other consumer information to increase public awareness of the importance and methods of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. The November 2002 final rule applied to all new and retreaded tires for use on vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and to all vehicles with a GVWR of 10,000 pounds or less, except for motorcycles and low speed vehicles.

After considering the petitions and other available information, the agency is modifying certain aspects of its November 2002 final rule.

DATES: The final rule published at 67 FR 69600 (November 18, 2002), as amended at 68 FR 33655 (June 5, 2003) by delaying the effective date, and further amended at 68 FR 37981 (June 26, 2003), is further amended by delaying the effective date from September 1, 2004, to September 1, 2005. Additionally, the amendments in this rule are effective September 1, 2005. Voluntary compliance is permitted before that time.

FOR FURTHER INFORMATION CONTACT:

For technical and policy issues: Ms. Mary Versailles, Office of Planning and Consumer Standards. Telephone: (202) 366–2750. Fax; (202) 493–2290. Mr. Joseph Scott, Office of Crash Avoidance Standards, Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: George Feygin, Attorney Advisor, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

All of these persons may be reached at the following address: National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Summary of Decision

In response to the November 2002 final rule, which adopted new and revised tire safety information provisions,[1] NHTSA received petitions for reconsideration from tire and vehicle manufacturers and associations. These petitions addressed various aspects of the new tire labeling and vehicle labeling requirements, including Tire Identification Number (TIN) placement, TIN height, location of the vehicle placard and label, content of vehicle placard, label, and owner's manual, and the effective dates for all applicable requirements.[2]

After considering the petitions and other available information, the agency is modifying certain aspects of both, tire labeling and vehicle labeling requirements. We are also clarifying content requirements for the vehicle placard, label, and the owner's manual. The following is a partial list of changes to the final rule:

- Retread tires are to be excluded from requirement that partial TIN be on the opposite sidewall from full TIN,
- A barcode or identification number will be permitted on the vehicle placard and label in a specified location,
- Tire load indications, "XL" or "Reinforced," will be permitted to be placed on the vehicle placard and label,
- On the vehicle placard and label, the "compact spare tire" designation will be modified to be "spare tire" or "spare,"
- Use of red ink on the placard and label is clarified and allowance is made for the use of either black text on a

[1] For more information on the final rule subject to this notice, please *see* 67 FR 69600 (November 18, 2002).

[2] To see the of all the comments, please go to *http://dms.dot.gov/* (Docket No. NHTSA–2002–13678).

yellow background or yellow text on a black background where currently specified,

- The chart within the Vehicle Placard of Figure 1 is re-formatted to be identical to the chart within the Tire Inflation Pressure Label of Figure 2,
- Reference to "occupants" is be removed from trailer placards and trailer owner's manuals, and
- Incomplete and intermediate vehicle manufacturers are not allowed to affix a placard to an incomplete vehicle.

This rulemaking also extends the effective date for compliance with vehicle labeling requirements for one year. The new effective date for the vehicle labeling requirements is September 1, 2005. The phase-in for the tire sidewall labeling requirements will begin on September 1, 2005. Additionally, the requirement that tire manufacturers apply the full TIN on the "intended outboard sidewall" is no longer subject to the phase in schedule. Instead, the tire manufacturers may select which sidewall will contain the full TIN until September 1, 2009, at which time all tires will have to contain the full TIN on the "intended outboard sidewall." All other tire labeling requirements, including the requirements for the partial TIN, will continue to be subject to the phase-in schedule. The phase-in schedule for all tire labeling requirements, other than full TIN on the "intended outboard sidewall," is as follows:

Between 9/1/2005 and 8/31/2006.	40% of all tires subject to the November 2002 final rule must comply.
Between 9/1/2006 and 8/31/2007.	70% of all tires subject to the November 2002 final rule must comply.
On September 1, 2007.	100% of all tires subject to the November 2002 final rule must comply.

II. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, Pub. L. 106–414, required the agency to address numerous matters through rulemaking. One of these matters, set forth in section 11 of the Act, was the improvement of the labeling of tires required by section 30123 of title 49, United States Code, to assist consumers in identifying tires that may be the subject of a recall.

Additionally, section 11 provided that the agency may take whatever additional action it deemed appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. Section 11 stated that such additional action may, for example, include a requirement that the manufacturer of motor vehicles provide the purchasers of the motor vehicles with information on appropriate tire inflation levels and load limits if the agency determined that requiring such manufacturers to provide that information was the most appropriate way that the information can be provided.

In response to this mandate, NHTSA issued the November 2002 final rule establishing a single standard for light vehicle tires, FMVSS No. 139, *New Pneumatic Tires for Light Vehicles*.[3] It also established provisions for labeling requirements that address the following aspects of tire and vehicle labeling: tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. The rule applied to all new and retreaded tires for passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less, manufactured after 1975, and to all passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less.[4] The performance-based requirements of FMVSS No. 139, and their applicability, are addressed in the final rule on tire performance upgrade (68 FR 38116).

In separate documents, dated June 5, 2003 (68 FR 33655), and June 26, 2003 (68 FR 37981), the agency clarified the applicability of the November 2002 final rule and extended the mandatory compliance date of the vehicle labeling provisions from September 1, 2003, to September 1, 2004.

III. Petitions for Reconsideration

NHTSA received petitions for reconsideration of the November 2002 final rule from the following entities: Alliance of Automobile Manufacturers (Alliance), Volkswagen (VW), Rubber Manufacturers Association (RMA), European Tyre and Rim Technical Organization (ETRTO), Japan Automobile Tyre Manufacturers Association (JATMA), Hankook Tire Co. (Hankook), Tire Industry Association (TIA), and Thomas Built Buses (Thomas Built).

NHTSA also received untimely submissions from the National Truck Equipment Manufacturers Association (NTEA), General Motors (GM), National Association of Trailer Manufacturers (NATM), National Marine Manufacturers Association (NMMA), Recreational Vehicle Industry Association (RVIA), and JATMA (a separate submission, requesting additional leadtime). Section 553.35 of title 49, CFR, requires that petitions for reconsideration of a final rule be received not later than 45 days after the publication of that rule in the **Federal Register**. That section further provides that untimely petitions are treated by the agency as petitions for rulemaking. However, untimely petitions received in connection with the November 2002 final rule addressed issues substantively similar to those raised by the timely petitions and therefore, we are addressing and responding all submissions in this document.

The petitioners raised a variety of issues, including ones relating to the placement of the TIN, the TIN date code, the TIN height, maximum permissible inflation pressure requirements, additions to the vehicle placard, alternative locations of the vehicle placard, color requirements for the vehicle placard, placard content and location for trailers, effective dates, owner's manual information, and the applicability of FMVSS No. 110. All issues raised in the petitions for reconsideration are addressed in the Discussion and Analysis section below.

IV. Discussion and Analysis

A. Tire Sidewall Labeling

1. Placement of TIN

As expressed in paragraph S5.5.1 of FMVSS No. 139, the November 2002 final rule required that the full TIN is placed on the "intended outboard sidewall" of the tire, and either the full TIN or a partial TIN, containing all aspects of the TIN except for the date code, is placed on the opposite side. "Intended outboard sidewall" is defined in FMVSS No. 139 as the sidewall that contains a whitewall, bears white lettering, or bears manufacturer or model name molding that is higher or deeper than that on the other sidewall of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the full TIN on one

[3] Section 10 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act mandated that the agency issue a final rule to revise and update its tire performance standards. The performance-based requirements of FMVSS No. 139, and their applicability, are addressed in the final rule on tire performance upgrade (June 26, 2003; 68 FR 38116).

[4] Therefore, this standard is applicable to LT tires up to load range E. This load range is typically used on large SUVs, vans, and trucks.

sidewall and with either the full TIN or a partial TIN on the other sidewall.

Five petitioners raised issues regarding the placement of the TIN. JATMA argued that the agency should give tire manufacturers flexibility in determining the placement of the full TIN. RMA asserted that the agency should allow the full TIN to be placed on the opposite side from the sidewall with white lettering. RMA noted that NHTSA acknowledged that there are cost implications, technical issues, and worker safety concerns associated with requiring a full TIN in the top half of a tire mold. Because the "intended outboard sidewall" is usually in the top half of the mold, RMA states, the only way to comply with the final rule and eliminate work safety concerns is to "flip" these molds or replace them with a new molds with the "intended outboard sidewall" in the bottom half of the mold. According to RMA, flipping or replacing the molds will have significantly higher costs, $224,524,000, than those estimated by NHTSA. Further, RMA argues that this provision of the final rule only marginally improves the visibility of recall information.

NHTSA is not adopting JATMA's request that the agency indefinitely allow the tire manufacturers to place the full TIN on sidewall of their choosing. As discussed throughout this rulemaking, requiring that the full TIN appear on the sidewall of the tire most accessible by consumers is the best means of ensuring that a consumer can easily determine whether a tire is subject to recall without having to take the vehicle to a dealer for examination. Further, enabling a consumer to have easy access to this important recall information was a major component of Congressional testimony on the issue of tire safety information.

In the November 2002 final rule, the agency stated that 80% of tires potentially subject to a "typical" recall could be eliminated from the recall based on the information contained in the partial TIN. However, we noted that the partial TIN is less useful in situations where several manufacturing plants are involved in a recall.

Although we are not allowing manufacturers indefinite flexibility in determining placement of the full TIN, we do acknowledge RMA's concern associated with cost implications of replacing and flipping molds in order to comply with full TIN requirements. As previously discussed in the November 2002 final rule, all tire manufacturers had indicated that current molds typically last up to five years. Accordingly, in order to alleviate the cost burden associated with reworking and replacing current molds, the agency has decided to provide manufacturers with a five year lead time during which they have the flexibility to select which sidewall of their tires will contain the full TIN. For this five-year time period, the manufacturers may select which sidewall will contain the full TIN. However, by September 1, 2009, all tires must feature the full TIN on the "intended outboard sidewall." We note that all other tire labeling requirements, including the requirements for the partial TIN, will continue to be subject to the phase-in schedule discussed above.

NHTSA believes that this action, while easing the task of compliance, will not prove detrimental to the goal of making more tire safety information available to consumers. The benefits from the requirement that the partial TIN appear on the opposite sidewall of the full TIN will be available by 2007, when 100% of tires will be required to be manufactured with a full TIN on one sidewall and a partial TIN on the other. The partial TIN will be helpful in allowing consumers to determine more easily whether their tires are subject to a recall.

JATMA's petition also asked NHTSA to amend the final rule to allow directional tires [5] to have the full TIN placed on one sidewall and no partial TIN on the other sidewall. JATMA argued that directional tires do not have an intended outboard sidewall and that when the tires are mounted in pairs in the same rotating direction, the full TIN will always be outward on one side of the vehicle.

We do not agree with JATMA that the partial TIN is unnecessary for directional tires. The agency does not believe that directional tires will always be installed in pairs on all vehicles, and that each pair of tires will necessarily contain the same TIN. Since these tires will not necessarily be installed in matching pairs, the TIN exposed on one tire on one side of the vehicle, would not necessarily be indicative of whether the tire on the other side of the vehicle would be subject to the recall in question. Furthermore, in situations where both left side and right side directional tires are manufactured from a single mold, the full TIN would appear on the outboard sidewall only 50% of the time.

[5] Directional tires have directional tread designs (sometimes called unidirectional tread designs). The tire is intended to rotate in just one direction, so that certain characteristics, such as resistance to irregular wear, wet weather handling or road feel can be enhanced.

Similarly, the agency considered asymmetrical tires,[6] which when mounted correctly, always have the intended outboard sidewall exposed. Again however, there is a possibility that asymmetrical tires would be mounted incorrectly, thus obscuring the only available TIN.

While directional and asymmetrical tires are not very common, we believe that a uniform requirement of a full TIN on one sidewall and a partial TIN on the other sidewall of all tires would best advance our goal of enabling consumers to determine whether their tires are subject to a recall. As discussed above, we also believe that TIN should be available on both sidewalls because we are concerned that the directional and asymmetrical tires may be mounted incorrectly or not necessarily in pairs. Accordingly, the agency is not adopting the petitioner's request.

ETRTO, JATMA and Hankook requested in their petitions that the agency amend the final rule to permit tire manufacturers to mark the optional code of the TIN on only one side of the tire. They argued that changing the mold to accommodate the optional code on both sides of the tire raises the same safety concerns that arise when changing the date code and that this additional marking incurs additional costs which were not quantified in the rulemaking. They also asserted that manufacturers should not be required to include the optional information in the partial TIN even though they decided to include it in the full TIN.

The optional code represents the third grouping of numbers, up to 4 digits, which may be added to the TIN at the option of the manufacturer and used as a descriptive code for identifying significant characteristics of the tire. We agree with the petitioners that since the use of this code is optional, it should be entirely optional so that the manufacturer can include it in either the full TIN, or the partial TIN or in neither. The decision to make the use of this code fully optional will not impinge on the efficacy of recall actions because we believe that the required information in the full TIN and partial TIN is sufficient to enable the consumer to determine whether a given tire is subject to a recall.

TIA petitioned the agency to amend the final rule to exclude retreaded tires from the requirement to have the TIN information on both sidewalls and the full TIN on the "intended outboard sidewall" of the tire. TIA argued that the

[6] Asymmetrical tires have a tread pattern design that changes across the tire (from bead to bead), often with a change in tread rubber compounds.

main purpose of TREAD was to facilitate recalls and since retreaded tires have never been subject to a recall, the application of new TIN labeling provisions to retreads is unnecessary. Additionally, they argue that consumers of retreads are more sophisticated about tire labeling and are more likely to mount tires so that this information is readily visible. Further, TIA stated that the molding costs for placing the TIN on both sidewalls or on the intended outboard sidewall is higher than NHTSA estimated for retreaders and that these costs bring the costs of retreads closer to the costs of new tires which, consequently, will drive many retreaders out of an already shrinking market.

While the agency does not necessarily agree with TIA's assertions concerning greater sophistication of retread tire users or TIA's costs estimates, the agency does agree that the tire safety information recall provisions of TREAD would have very little effect on consumer information because retreads, besides being a very small part of the light vehicle tire market, have never been involved any NHTSA recall action. Accordingly, the agency is granting TIA's request to exclude retread tires from the requirement to have the TIN information on both sidewalls and the full TIN on the "intended outboard sidewall" of the tire. Based on the very small market share and lack of recall history, retread tires containing the full TIN on one, unspecified sidewall, without additional partial TIN, should present no significant safety concerns for consumers.

2. Height of TIN

As specified in § 574.5, the November 2002 final rule requires that each character in the TIN be 6 mm (¼") high. Prior to the November 2002 final rule, all portions of the TIN were required to be a ¼" in height, except for the date code, which was required to be 5/32". The agency stated that a requirement for a uniform TIN font size would significantly improve the readability of the TIN.

ETRTO, JATMA and RMA petitioned the agency asking that tires under 13-inch bead diameter or 6-inch cross section be excluded from the TIN height requirement. They asserted that prior to a July 8, 1999 final rule, tires of these cross-section widths and bead diameters were permitted to use 5/32" lettering instead of the ¼" lettering. This 5/32" provision, they argue, was "unintentionally omitted" from the published revisions to Figures 1 and 2 of § 574.5 in the July 8, 1999, final rule.[7]

The agency is not adopting the petitioners' request for two reasons. First, based on an informal survey of tires with the size bead diameter or cross section that are the subject of this request conducted, we were unable to find a single tire of this type that did not already meet the 6 mm (¼") height requirement.[8] Additionally, the agency's adoption of the 6 mm uniform height TIN, which occurred subsequent to the alleged "unintentional omission," was based on previous rulemakings and consideration of comments on the ANPRM and NPRM that almost unanimously indicated that a smaller font size for the TIN was not sufficient. Based on the agency's research and the safety implications associated with the font height of the TIN, we are retaining the uniform 6mm (¼") height requirement for tires with under a 13-inch bead diameter or a 6-inch cross section.

3. Other

a. "Maximum Permissible Inflation Pressure" Requirements

In the November 2002 final rule, the agency extended the "maximum inflation pressure" labeling requirements to light truck tires. This provision is expressed in paragraph S5.5.6 of FMVSS No. 139.

RMA, in its petition, asked the agency to make it clear that the "maximum permissible inflation pressure" requirements in S5.5.4 apply only to passenger car tires and that the requirements in S5.5.5 apply only to high-pressure temporary spare tires. RMA's primary concern appears to involve S5.5.4, which, it stated, would require manufacturers to stamp LT tires with new maximum inflation pressures if this paragraph were interpreted to apply to LT tires as well as to p-metric tires. RMA stated that this would occur because, under S5.5.4, manufacturers of LT tires would be required to stamp LT tires with new maximum inflation pressure values since it requires rounding to the "next higher whole number" or "nearest high number" while, in contrast, light truck standards and tire markings are rounded to the "closest 5 pounds" for the maximum load rating or the "closest psi."

In response to RMA's request that we restrict applicability of S5.5.4 and S5.5.5 to only passenger car tires and high-pressure temporary spare tires, we have decided to revise the applicability of S5.5.4, but not S5.5.5. We agree with RMA's assertions concerning applicability of S5.5.4 to LT tires. The "maximum inflation pressure" labeling requirements for light trucks are in S5.5.6. However, without specification, S5.5.4 could mistakenly be interpreted to apply to LT tires, especially since S5.5.6 does not appear until after S5.5.4. With regard to S5.5.5, the agency does not believe that it is necessary to amend this paragraph to specify that it is only applicable to high-pressure temporary spare tires. S5.5.5 currently specifies that its "maximum permissible inflation pressure" provisions are only applicable if the maximum inflation pressure of the tire is 420 kPa (60 psi). Currently, none of the values in the industry yearbooks provides a maximum load at 420 kPa for LT tires. Accordingly, we do not anticipate any confusion concerning application of S5.5.5 to anything other than temporary spare tires.

b. Date Code

In its petition, RMA expressed two concerns with the final rule's modifications to § 574.5(d), which specifies the fourth grouping requirements of the TIN. RMA's first concern stems from the first sentence of the paragraph which states "[f]or tires produced or retreaded according to the phase-in schedules specified in S7 of §§ 571.117, 571.129, 571.139 of this chapter, the fourth grouping, consisting of four numerical symbols, must identify the week and year of manufacture."

RMA read this provision as limiting the applicability of § 574.5(d) to light vehicle tires subject to the phase-in schedules in the final rule. RMA argued that tires not subject to the phase-in schedule should continue to be marked with the full TIN, including the 4-digit date code. RMA requested the deletion of the phrase "[f]or tires produced or retreaded according to the phase-in schedules specified in S7 of §§ 571.117, 571.129, 571.139 of this chapter," so that all light vehicle tires, not only those subject to the phase-in schedule under the final rule, are covered by the 4-digit date code requirement in the fourth grouping.

We agree with RMA that the phrase "[f]or tires produced or retreaded according to the phase-in schedules specified in S7 of §§ 571.117, 571.129, 571.139 of this chapter," unnecessarily limits the application of fourth grouping requirements to light vehicle tires under the final rule phase-in schedules. This was not the intention of the requirement. Therefore, we are adopting RMA's request to delete the

[7] The July 8, 1999, final rule amended tire labeling requirements to change the date code from 3 digits to 4 digits rather than 3, *see* 64 FR 36807.

[8] *See* docket No. NHTSA–2002–13678–30.

aforementioned sentence from the regulatory text.

RMA's second concern arises from the third sentence of § 574.5(d) which reads "[t]he calendar week runs from Sunday through the following Saturday." RMA argued that the introduction of an inflexible definition on a non-safety matter is unreasonable and impracticable. RMA stated that this revision would result in unnecessary lost production costs because it would force some manufacturers, which operate on a continuous basis (24 hours per day, 7 days per week) to change all of their date codes at one time. RMA requested that the agency delete the definition of "calendar week" in this provision.

NHTSA is not adopting RMA's request regarding the definition of "calendar week." The agency, since May 10, 2001, has interpreted the "calendar" week as it is now defined by the November 2002 final rule in § 574.5(d). In this interpretation, we stated that to allow alternative definitions of "calendar week" could lead to obscuration, confusion or otherwise defeat the purpose of this information vital for the safe use of tires.[9] Unlike RMA, we believe that the date code, as well as other required aspects of the TIN, constitute a "safety matter." Further, we continue to believe that needless confusion, in either the production or consumer usage of the fourth grouping, might occur if we were to allow manufacturer to employ different definitions of "calendar week." Finally, we note that the date code requirement is a record keeping requirement that will have no actual bearing on the way tire manufacturers choose to operate their production facilities.

B. Vehicle Placard and Optional Tire Inflation Pressure Label

In the November 2002 final rule, the agency revised existing Vehicle Placard (placard) requirements and introduced optional Tire Inflation Pressure Label (label) requirements. Previously, the placard was required for passenger cars under S4.3 of § 571.110. The final rule extended this requirement to all light vehicles with a GVWR of 10,000 pounds or less.[10] The placard currently displays the vehicle capacity weight, the designated seating capacity, the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation. Under the final rule, the manufacturers could either affix the newly required placard, or the current placard coupled with a tire inflation pressure label, to the driver's side B-pillar.

The placard and label content requirements are listed below.

First, we required that the placard contain certain information specified in S4.3 (paragraphs (a)–(e)).[11] This information cannot be combined with any other additional information.

Second, the agency required that the label and placard meet the following three requirements: (1) The tire inflation pressure information in the placard must be visually separated by a red border from the other information on the existing vehicle placard or, alternatively, be placed on a separate label. The purpose of this requirement is ensure that the information is noticeable and explicit; (2) the placard and label must contain a black and white tire symbol icon in the upper left corner, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) tall/high; and (3) the placard and label include the phrases "Tire and Loading Information"; and "Tire Information" and "See Owner's Manual For Additional Information" in yellow text on a black background.

Third, the agency replaced the vehicle capacity weight statement on the vehicle placard with the following sentence: "[t]he combined weight of occupants and cargo should never exceed XXX kg or XXX pounds." The "XXX" amount equals the "vehicle capacity weight" of the vehicle as defined in FMVSS No. 110. The information is the same as that currently required to be placed on the vehicle placard by manufacturers.

Fourth, the agency replaced the vehicle's recommended tire size designation with the tire size designation for the tires installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would be identical, this minor revision ensures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer. The original tire size designation and accompanying recommended inflation pressure is indicated by the headings "original tire size" or "original size" on the placard or label.

The final rule required that the placard or placard and label be located on the driver's side B-pillar. If a vehicle does not have a B-pillar, then the placard and label will be placed on the edge of the driver's door. If the vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the placard or placard and label are required to be affixed to the inward facing surface of the vehicle next to the driver's seating position.

1. Content

Numerous petitioners requested that the agency allow or require certain additional information on the vehicle placard. Majority of these requests had been previously considered and addressed by the agency in previous stages of this rulemaking. These issues are addressed below.

The Alliance and RMA asked the agency to amend the final rule to allow the service description (load index and speed-category rating) to be placed on the placard or label. In the final rule, NHTSA stated that it had decided to prohibit placing the service description on the placard and label because it "does not provide readily apparent or available information to consumers and would make it necessary for a vehicle operator to look to an index in the owner's manual or a tire industry publication to determine the actual tire maximum load." The Alliance, in its petition, stated that because this information is only pertinent to tire replacement and not important for everyday maintenance, consumers need not understand the meaning of the symbols but only need to match the symbols when replacing tires. The Alliance also stated that only allowing this information to be contained in the owner's manual means that it is less likely that the information will stay with the vehicle for its entire life. RMA similarly argued that, even with the maximum load rating listed on the consumer's existing tires, replacement tires are less likely to be mismatched if

[9] *See* NHTSA interpretation letter to Dae-Ki Min of Hankook Tire at *http://www.nhtsa.dot.gov/cars/rules/interps/*.

[10] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3(b)), the tire size designation and recommended cold inflation pressure such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.*, a passenger car tire) is appropriate for the GAWR, and the size and type designation of rims appropriate for those tires.

[11] (a) Vehicle capacity weight expressed as "The combined weight of occupants and cargo should never exceed xxx kg or xxx lbs."; (b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location); (c) Vehicle manufacturer's recommended cold tire inflation pressure; (d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and (e) The statement "SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION."

the tire service description is included on the placard and/label.

VW petitioned the agency to amend the final rule to allow the following on the vehicle placard or tire inflation pressure label: (1) Optional tire sizes and applicable inflation pressures, (2) different tire pressures for various loading conditions or driving speeds, (3) references to the presence and location of additional labels in other locations with inflation pressure information, and (4) multiple tire size and rim designation with analogous GAWRs and GVWRs.

Similarly, the Alliance asked the agency to clarify whether the listing of optional tire sizes and applicable inflation pressures and different tire pressure for various loading conditions or driving speeds is permitted. The Alliance also requested that the agency allow multiple tire size and rim designations to appear on the placard and label.

With regard to its requests concerning optional tire sizes and applicable inflation pressures and multiple tire size/rim designations, VW stated that it currently uses pre-printed labels that include all available tire options and that it would be costly to separately print labels for each option. Also, VW stated that for its non-passenger cars, it has been providing this information on either the certification label or another label that largely mirrors the certification label and to change the format of these labels would be costly to it. Additionally, it stated that a dealer may change the tires that were installed on the vehicle at the time of manufacture, and thus the information on that tire on the placard would be incorrect. Lastly, VW argued that vehicle owners may not be aware that tire option information or multiple tire size/rim designations are available on a separate label or in the owner's manual.

ETRTO petitioned NHTSA to amend the final rule to allow the actual front and rear axle weight to appear on the vehicle placard. NTEA suggested that the placard make it clear that axle overloading by consumers relying upon the loading information provided on the placard is not a safety defect. These commenters asserted that maximum load capacity is of no use if the customer cannot check compatibility with the GAWR and that consumers, with the information provided on the placard, could still overload one of the axles without exceeding the vehicle capacity weight.

The agency continues to believe that allowing the additional information such as optional tire and rim sizes, inflation pressures, alternative label locations, and axle weights, on the placard and label is not appropriate because listing such information in addition to the original tire size designation and the corresponding recommended inflation pressure would overcrowd the already content rich vehicle placard.

The agency considered the arguments presented by petitioners with respect to dealers possibly installing optional tires or rims that differ from those installed by the manufacturer, and consequently, the placard may not accurately reflect the correct inflation pressures or loading characteristics for that vehicle. First, we note that optional tire sizes recommended by vehicle manufacturers often have the same recommended inflation pressures as the original equipment tires. Second, dealers are not permitted to sell non-complying vehicles or take actions which would take a vehicle out of compliance with the applicable safety standards.[12] Therefore, if a dealer substitutes tires in such a way that the placard was no longer accurate, the dealer would need to affix a new placard. To make this clear, we have amended the language of S4.3(d) of FMVSS 110.

With regard to the request to include axle weights on the placard, the agency points out that this information is provided on the certification label and, if the manufacturer chooses, can be included in the owner's manual.

The agency, similarly, continues to view the service description as non-critical information that should not appear on the placard or label. Petitioners have not been able to demonstrate to the agency that the two labeling items contained in the service description, speed-category symbol and load index,[13] effectively communicate everyday tire maintenance and safety information to the U.S. public. Both these items provide the sort of information that is not intuitive to consumers and would require vehicle operators to look to the owner's manual in order to determine the actual maximum load and maximum rated speed of the tire. We note that manufacturers may continue labeling tires with this optional information, but the agency will not permit this information to be placed on the vehicle placard and label.[14]

In sum, the agency believes that overcrowding the vehicle placard and tire inflation pressure label with information considered non-critical for regular maintenance would discourage the use of tire inflation pressure information on the placard and/or the label. Additionally, vehicle manufacturers may place this information on the certification label or include it in the owner's manual. Accordingly, the agency is not amending its general prohibition against "other information" being added to the vehicle placard and label.

Several petitioners presented novel requests for changes and clarifications of the new labeling requirements that have not been previously contemplated by this agency. These issues are discussed below.

The Alliance stated that since the vehicle placard would now be required on vehicles that contain more than one rear seating area/row, the agency should clarify whether manufacturers may show rear seating capacity individually by row rather than as a total for all rear rows.

NHTSA does not believe that it is necessary for manufacturers to separate rear seat information by rows because the presence of seat belts will indicate to vehicle operators the number of designated seating positions in each row. Additionally, the agency anticipates that seating designation information would be contained in the owner's manual. Because this information is non-critical and otherwise available to the vehicle operator, the vehicle placard may not indicate the rear seating capacity by row. Instead, the placard must indicate the total number of rear seats, *i.e.* all seats located in rear designated seating positions.

The Alliance and VW requested that NHTSA allow a barcode or partial number of the VIN to be added to the placard. They stated that because many vehicles will require unique labeling under this final rule, this type of information is needed to manage and track the accuracy of the placard or label application.

NHTSA agrees with these petitioners that tracking and coordinating the correct application of unique placards and labels to vehicles has become more

[12] *See* 49 U.S.C. 30122, which prohibits "making inoperative, in whole or in part" any part of a device or element of design installed on or in a motor vehicle in compliance with an applicable motor vehicle safety standard.

[13] Under these regulations, the speed-category symbol and the load index are to be placed together near the size designation. For example, the sidewall would contain the size designation "P215/65R15 89H" where "H" is the speed-category symbol and "89" is the load index.

[14] We note that Figure 2 of the November 2002 final rule incorrectly contained the load index and the speed category symbol. This document contains corrected figures depicting the tire information label and the tire placard. The load index and the speed category symbol have been excluded from the revised figures.

complicated under the final rule and that enabling this task to be done correctly is an important concern. For these reasons, we are allowing vehicle manufacturers to place an optional identifier on the placard and label. This optional identifier (as indicated in the revised Figures 1 and 2 of FMVSS No. 110), must be located in the lower right hand corner of the placard or label and orientated vertically to the right of the "See Owner's Manual for Additional Information" block of text.

RMA and the Alliance petitioned the agency to amend the final rule to allow placement of a load identification, *e.g.*, "XL" or "Reinforced," on the placard or label. The Alliance stated that it is not clear under the final rule whether the designation for reinforced or extra load tires is included in the description for "tire size designation." RMA argued that the designation of extra load passenger tires is critical information to communicate with consumers so they are able to make appropriate, safety based decisions in the selection and use of replacement tires.

NHTSA anticipates that there are very few vehicles in the affected weight category that would be equipped with these types of tires as original equipment. However, the agency agrees with petitioners that when the vehicles are equipped with these tires, consumers should be made aware of this information so that they know to replace them with tires capable of holding a similar load. Therefore, NHTSA is amending the final rule to allow load identification, labeled as "XL" or "reinforced", after the tire size designation.

NTEA asked NHTSA to clarify the calculation of wheelchair seating designations for the purpose of determining "vehicle capacity weight" on the placard and label, because § 571.3 specifies that a wheelchair position be counted as 4 designated seating positions. NTEA asserts that consumers will become confused if manufacturers are required to indicate a seating capacity that counts a wheelchair position as 4 positions. NHTSA provides the following clarification. Each wheelchair designation will be counted as only 1 seating position for the purposes of labeling. However, in determining the vehicle capacity weight, NHTSA expects that manufacturers will allocate extra weight necessary for the wheelchair in the calculation of the load that the vehicle and tires must be capable of carrying.

VW, the Alliance, and NTEA made several requests regarding the labeling of spare tire information on the placard and/or label. VW asked the agency to amend the final rule to allow spare tire information to be optional. NTEA asked to be allowed to include the word "none" under the spare tire heading if no spare tire is included on the vehicle. NTEA and the Alliance requested that the agency clarify differences in headings in figures, *e.g.*, "compact spare tire" and "spare" and requested that the agency use "spare" consistently since some vehicles are equipped with full-size spare tires. The Alliance further stated that NHTSA needs to clarify whether pneumatic spare tire information is permitted on the placard since this is not specified as required information in the regulatory text, and the rule specifies that non-required information is not permitted on the label. The Alliance also requested that the agency amend the final rule so that all references in the regulatory text to non-pneumatic tires refer to "non-pneumatic spare tire assembly" instead of non-pneumatic assembly.

The agency believes that consumers need to be aware of the inflation characteristics of spare tires so that they can be maintained properly. Accordingly, we will continue to require that both the placard and the labels contain spare tire information. However, in response to industry requests, the agency will clarify the spare tire information requirements. Specifically, we are amending the final rule to permit the use of word "none" under the spare tire heading, in those instances where original equipment on the vehicle does not include a spare tire. To provide further clarification regarding spare tires, NHTSA is amending its heading on the placard and the label to require the use of either "spare tire" or "spare." We agree with petitioners that the term "compact spare tire" would not be appropriate or could be potentially confusing if a vehicle was equipped with a full size spare tire.

NHTSA is also amending the regulatory text of FMVSS No. 110 so that the spare tire information included on the label is correctly represented as required information. Additionally, we are amending paragraph S4.3(g) to reference "non-pneumatic spare tire assembly" instead of "non-pneumatic assembly" as stated in the final rule. The analogous provision in the current version of FMVSS No. 110 refers to "non-pneumatic spare tire assembly." The agency inadvertently omitted the words "spare tire" from this phrase when drafting the final rule and is now correcting this error.

Finally, after reviewing petitions for reconsideration of the November 2002 final rule, we decided to modify the Vehicle Placard in Figure 1 so that the chart within the placard is formatted identically to the chart within the Tire Inflation Pressure Label in Figure 2. We conclude that the chart currently found within Figure 2 is better organized than the chart currently found within Figure 1. We believe that the uniform use of a single chart format will enable consumers to better understand the necessary tire information. Additionally, in those rare instances where a vehicle is equipped with front and rear tires of different sizes, the chart format from the Figure 2 will allow a manufacturer to identify different tires sizes for front and rear tires. The Vehicle Placard in Figure 1 has been revised accordingly. This rule contains updated examples of the Vehicle Placard and the Tire Inflation Pressure Label.[15]

2. Location

Paragraph S4.3 of FMVSS No. 110 requires the placard be permanently affixed to the driver's side B-pillar. If the vehicle lacks a B-pillar on the driver's side, the placard must be permanently affixed to the edge of the driver's side door. If the vehicle lacks a driver's side B-pillar and either has a driver's side door whose edge is too narrow to permit the affixing of the placard or lacks a driver's side door, the placard must be affixed to the inward facing surface of the vehicle next to the driver's seating position. This paragraph also requires the tire inflation pressure label, if present, to be permanently affixed and proximate to the placard.

The Alliance petitioned the agency to amend the final rule to allow alternate locations for the vehicle placard and tire label. The Alliance stated that the B-pillars of some vehicle do not have sufficient flat surface to design a placard that is "legible, visible and prominent." They also stated that some vehicles lack a conventional B-pillar and are equipped with 2 doors opening in opposite directions. In these vehicles, the Alliance argues, the front-facing edge of the rear door is in a vehicle position similar to the B-pillar. The Alliance asserted that if manufacturers were required to design a label that would fit the available space, it might result in a label that is difficult to read due to size or angle. The Alliance requested the following alternatives to the B-pillar for placement of the placard and label: (1) Edge of driver's side door, (2) the leading edge of the driver's side rear door if the two doors on the same side of the vehicle open in opposite directions, (3) the inward facing surface

[15] Please *see* Figure 1 and Figure 2 respectively.

of the vehicle next to the driver's seating position, or (4) the outboard side of the instrument panel on the driver's side of the vehicle. In addition to placard location, the Alliance raised several other issues for clarification. First, they asked whether the "inward-facing surface of the vehicle next to the driver's seating position" means the driver's door. They asserted that this surface is often carpeted or textured, making permanent attachment of a label difficult. Second, the Alliance asked whether the placard and label could be placed on the back wall of the cab behind the driver's seat and immediately adjacent to the B-pillar or on the driver's seat pedestal.

The agency stated in the final rule that an important and overriding element of the placard and label location requirements is that they are placed in an accessible and predictable location in motor vehicles. Keeping this goal in mind, the agency has decided to slightly expand the flexibility provided to manufacturers for the location of the placard and label.

For vehicles that lack a conventional B-pillar and have two doors on the same side opening in opposite directions, the agency agrees with the Alliance's argument that the front-facing edge of the rear door is in a vehicle position similar to the B-pillar. In fact, the agency believes that this location is visually equivalent. Therefore, while the agency will continue to require that the placard be permanently affixed to the driver's side B-pillar, it will, in the case of a vehicle with no B-pillar and two side doors opening in opposite directions, specify that the placard be located on the forward edge of the rear door.

However, if the B-pillar or the front-facing edge of the rear door, in vehicle without a B-pillar, does contain surface sufficient to permit affixing of a placard that is legible, visible and prominent, the agency will specify that the placard be located on the edge of the driver's side door. Finally, if this location still does not permit affixing of a placard that is legible, visible and prominent, the agency will specify that the placard be affixed to the inward facing surface of the vehicle next to the driver's seating position.

We note that these alternative locations are available only in the event that placement of the placard on the B-pillar, or in vehicle with no B-pillar and two side doors opening in opposite directions, the forward edge of the rear door, is not feasible. The agency continues to believe that a standardized location, with limited alternatives to accommodate special designs, will contribute to consumer awareness of recommended tire inflation pressure and load limits. The agency also notes, as it did in the final rule, that it has provided manufacturers with great flexibility concerning the size, shape and dimension of the placard. This flexibility provides manufacturers with considerable latitude to design the placard and label in a manner that can be configured to different vehicle designs.

In response to the Alliance's request for clarification of whether the "inward-facing surface of the vehicle next to the driver's seating position" means the driver's door, the answer is yes. This surface could include the driver's side door or, if a driver's side door does not exist, it would be the surface located directly to the left of the driver's position. The agency does not agree, however, with the Alliance's assertion that permanent attachment of a placard and label to this surface is difficult because this surface is often carpeted or textured. We note that vehicle manufacturers have, for years, been required to permanently affix rollover and airbag warning labels to sun visors, which are often covered with fabric or textured. It is our understanding that achieving permanency when applying a label to a fabric surface is easily accomplished by heat transferring the labels directly to the material surface. Therefore, NHTSA will not amend the final rule to delete the "inward-facing surface of the vehicle next to the driver's seating position" location for placement of the placard and label.

3. Color

The November 2002 final rule requires that the placard and label conform in color to examples set forth as Figures 1 and 2 of FMVSS No. 110. As indicated in those figures, the agency requires that the tire inflation pressure information be visually separated by a red border from other information on the vehicle placard. The final rule also requires that the tire inflation pressure information appear in black text on a white background and that the phrases "Tire and Loading Information," "Tire Information," and "See Owner's Manual For Additional Information" appear in yellow text on a black background.

In its petition, the Alliance requested that the agency amend the final rule to allow black text on a yellow background in those instances in which yellow text is required on a black background. The Alliance asserted that this revision would be consistent with current color schemes on other warning labels. Also, this requested amendment would allow manufacturers to stock pre-printed backgrounds for labels that could then be overwritten with black ink using existing laser printers. Lastly, the Alliance argued that the intent of using yellow to attract attention to the labels is preserved by this request.

The agency has decided to adopt the Alliance's request. The agency agrees that black text on a yellow background would be as noticeable as yellow text on a black background. Therefore, we are amending the final rule to allow manufacturers the option of printing these areas on the placard and label as either black text on a yellow background or yellow text on a black background.

With regard to the use of red ink for print on the placard, NTEA requested clarification of whether the headings and tire pressures listed on the placard and label are required to be in red ink. NTEA also stated that red ink is more susceptible to UV fading and that a significant minority of the population is red/green color blind.

We wish to clarify that the November 2002 final rule required only that the tire inflation pressure information on the vehicle placard be visually separated by a red border from all other information. There were no additional requirements for use of red ink anywhere on the placard or the label.

In sum, the color scheme of the label is black ink on a white background, except for: (a) The tire inflation pressure information on the vehicle placard must be visually separated by a red border; and (b) the phrases "Tire and Loading Information" and "See Owner's Manual" on the vehicle placard, and the phrases "Tire Information" and "See Owner's Manual" on the vehicle label must both appear in yellow text on black background or black text on yellow background.[16]

4. Trailers

The November 2002 final rule extended application of vehicle labeling provisions to trailers. Several petitioners asked for clarification or presented requests regarding the manner in which the vehicle labeling provisions apply to trailers. NTEA requested that the agency remove the requirement for the "occupant weight" designation from trailer placards. It asserted that this statement implies that trailers are suitable for occupancy during transport and that this implication is dangerous. Similarly, RVIA, NMMA, and NATM suggested that NHTSA, with regards to trailers, delete the reference to occupants in the owner's manual

[16] Please *see* Figure 1 and Figure 2 accompanying this rulemaking. The figures indicate when use of color is required.

description for determining the correct load limit for the trailer.

NHTSA agrees with petitioners that the references to occupants are not appropriate for determining vehicle load either on the placard or in the owner's manual of trailers. Therefore, the agency is amending the final rule to specify that trailers should use the phrase "the weight of cargo should never exceed XXX kg or XXX lbs." instead of the currently required vehicle capacity weight statement. Similarly, NHTSA is specifying in the owner's manual descriptions of determining load limits for trailers should not reference occupants. NHTSA is also amending the final rule to specify that the section of the placard containing designated seating capacity information cannot appear on trailer placards.

RVIA petitioned the agency to allow a differently formatted placard for trailers. Except for specifying the removal of references to occupants and seating positions as discussed above, the agency is not granting this request. NHTSA believes that consistency of format will improve consumer use and understanding of the placard and label.

NATM, NMMA, and RVIA asked the agency to specify the location of the placard and label. NATM and NMMA requested that NHTSA require that the placard and label be placed by the certification label in the area specified in § 567.4(d) which states "[t]he label for trailers shall be affixed to a location on the forward half of the left side, such that it is easily readable from outside the vehicle without moving any part of the vehicle." RVIA petitioned for the agency to mandate that the placard appear in a "conspicuous location" and provided an example of the inside of a cabinet in the trailer.

Prior to NATM's petition, the agency discovered that it had not specified a location requirement for the trailer placard and label. Thereafter, we published a correcting amendment which, for vehicles with a GVWR greater than 10,000 lbs, required the placard and the label to be placed in the area specified in § 567.4.[17] Section 567.4 states "[t]he label for trailers shall be affixed to a location on the forward half of the left side, such that it is easily readable from outside the vehicle without moving any part of the vehicle." The agency is not adopting RVIA's request that the placard and label be placed in a "conspicuous location." NHTSA believes that the placard and label should be specified to be in a highly visible and objective location viewable from the outside of the trailer, not in a location, such as the inside of a cabinet or similar location, where the operator would need to know where to look to find the vital information contained on the placard and label.

5. Multistage Manufacturers

In the final rule, NHTSA considered labeling issues with respect to multi-stage manufactured and altered vehicles and decided that (1) Incomplete and intermediate manufacturers need not affix a placard to an incomplete vehicle, (2) alterers must affix a new placard, containing information accurate for the altered vehicle, over the placard installed by the vehicle manufacturer, so as to obscure the original placard, and (3) final stage manufacturers must label vehicles with vehicle capacity weight and seating designations "as finally manufactured," utilizing information contained in the document ("IVD") required by § 568.4 of part 568, *Vehicle Manufactured in Two or More Stages,* to be provided by incomplete and intermediate vehicle manufacturers and the information particular to their role in the manufacture of the vehicle.

NTEA petitioned the agency with respect to two multistage manufacturer issues. First, the petitioner requested that NHTSA require the chassis manufacturer to provide the unloaded vehicle weights for the front and rear axles for both complete and incomplete vehicles with factory weight options. NTEA stated that not all manufacturers currently provide this information and the only alternative to calculating weight based on the information provided would be for final stage manufacturers and alterers actually to weigh the vehicle themselves, which is costly and dangerous to the technicians. Second, NTEA asked that NHTSA make it clear that multi-stage manufacturers can rely on either the IVD or on the body builder book weights and other component supplier information to calculate the vehicle capacity weight required to be labeled on the placard.

With regard to the issues presented by NTEA, NHTSA reiterates what it has stated in the final rule, *i.e.*, the final stage manufacturers must themselves determine the unloaded vehicle weight, and the vehicle capacity weight. Under § 568.4(a)(4) and § 568.4(a)(5), incomplete and intermediate vehicle manufacturers are required to provide to the final stage manufacturer a document ("IVD") containing GVWR. In the event that the final stage manufacturer cannot determine the unloaded vehicle weight and passenger weight, the final stage manufacturer is responsible for determining this information by means including, but not limited to, weighing the final vehicle and/or performing calculations. These calculations cannot be estimated based on GVWR provided in IVD or the body builder book. We are concerned that imprecise estimates may lead to improper certification of vehicle weight and capacity.

While NHTSA recognizes that body builder books provide a useful resource to final stage manufacturers, particularly in instances where the IVD might become separated from the incomplete vehicle to which it relates, we are not specifying that these books can be relied upon instead of the IVD. As stated above, some of the information necessary to enable final stage manufacturers to label vehicles pursuant to the requirements of the November 2002 final rule is included in the IVD provided by incomplete and intermediate manufacturers. NHTSA, however, is taking this opportunity to encourage incomplete and intermediate manufacturers to include their component weight information in the body builder book weights and other component supplier information in order to facilitate the calculation of the vehicle capacity weight by the final stage manufacturers.

We also wish to clarify a statement regarding multistage manufacturer responsibilities in the preamble of the November 2002 final rule. The final rule states, "incomplete and intermediate manufacturers need not affix a placard to an incomplete vehicle * * *" We note that incomplete and intermediate manufacturers in fact cannot affix a placard to an incomplete vehicle. This clarification mirrors the regulatory text of FMVSS No. 110.

6. School Buses

School buses of 10,000 pounds GVWR or less fall under the applicability of FMVSS No. 110 as revised by the final rule. Thomas Built petitioned the agency to exclude school buses from the requirements of the final rule. Thomas Built argued that the number of occupants per seat on a school bus is variable and that professional drivers operate school buses so that the informational requirements of the rule offer little, if any, value.

The agency is denying this petition. While, as Thomas Built argues, the number of occupants per seat on some school buses may vary, school buses with a GVWR of 10,000 pounds or less must, as per paragraph S5(b)(1)(B) of FMVSS No. 222, have seat belts installed at each designated seating position. In other words, the designated number of seating positions on each school bus of 10,000 pounds GVWR or

[17] *See* 68 FR 37981 (June 26, 2003).

less is known because a seat belt must be installed in those seating positions. Therefore, the manufacturers of these vehicles are capable of labeling the required seating capacity and calculating the required vehicle weight information on the placard.

In response to petitioner's second point, the agency believes that the actual state of knowledge and level of expertise of personnel responsible for operating and maintaining school buses may vary considerably, especially for the smaller buses covered by this rule. For this reason, the agency is not excluding school buses from the requirements of this rule, which provide critical loading and inflation pressure information to the vehicle operators.

7. Other

GM, in a March 21, 2003 letter to the docket, highlighted the need for two technical corrections to the regulatory text of FMVSS 110 S4.3.4(b) and S4.3.4(c). GM pointed out that the language of FMVSS 110 S4.3.4(b) references S4.2 of that standard which, in turn references paragraph S5.5 of FMVSS No. 109 and that that paragraph contains a performance test only applicable to passenger car tires. Since FMVSS No. 110 will now also be applicable to non-passenger car tires, the agency is adding a reference to the analogous test, contained in FMVSS No. 119 S7.4, for non-passenger cars.

GM also highlighted the fact that the final rule regulatory text for paragraph S4.3.4(c) requires that each tire be capable of holding the entire vehicle maximum load and the vehicle normal load. The agency is correcting this error by adding the phrase "on the tire for those vehicle loading conditions" in the regulatory text to make it clear that each tire must be capable of holding its share of the loading conditions rather than the entire loading condition.

The agency was asked by a Mitsubishi whether, in providing the required verbatim statement in owner's manuals concerning steps for determining correct load limit, it is permissible to add metric values where they are not specified in the regulatory text.

In considering this question, we noticed a technical error in the regulatory text for the first step (§ 575.6(a)(5)). The regulatory text specifies that the first step is to "[l]ocate the statement "The combined weight of occupants and cargo should never exceed XXX pounds" on your vehicle's placard." However, the actual statement on the placard includes metric as well as English units. We are correcting the regulatory text in this rule to accurately reflect the information in the placard.

Mitsubishi's question is also relevant to the fourth step. The regulatory text for this step includes the following statement (again, to be included in the owner's manual): "For example, if the "XXX" amount equals 1400 lbs. and there will be five 150 lb. passengers in your vehicle, the amount of available cargo and luggage load capacity is 650 pounds (1400 − 750 (5 × 150) = 650 lbs.)".

Vehicle owners in the United States are familiar with English units, and we do not believe it is necessary to require metric units as part of this example. However, if a manufacturer wishes to voluntarily include metric units as well as the specified English units in this statement, we would not consider additional metric units to be inconsistent with the requirement that the statement be "verbatim." To avoid confusion, however, the entire equation in parentheses at the end of the statement should be provided separately in English and metric units, as the addition of a metric value after each English value could make it difficult to follow the example.

C. Applicability of FMVSS No. 110 and 120

Please note that the agency addressed issues related to the applicability of FMVSS No. 110 and 120 in a technical amendment published on June 26, 2003 (68 FR 37981).

D. Effective Date

In a notice dated June 5, 2003 (68 FR 33655), the agency extended the mandatory compliance date of the vehicle labeling and vehicle owner's manual provisions from September 1, 2003, to September 1, 2004. As discussed above, we are further extending the effective date of the November 2002 final rule to September 1, 2005. The phase-in schedule for tire labeling requirements has been revised to reflect the change in the initial effective date. Additionally, the manufacturers need not comply with the requirement that the full TIN be located on the intended outboard sidewall until September 1, 2009.

JATMA submitted a letter in August 2003, noting that it had not yet received a response to its petition for reconsideration, and stating that "[o]ur member companies are currently waiting for the agency's reconsideration, and, as a result, we do not have adequate time to comply with the phase-in schedule for tire markings commenc[ing] on September 1, 2004." JATMA requested that the agency provide at least 12 months lead time for the commencement of the phase-in schedule after the agency's response.

In response to Jamal's petition, we first note that all manufacturers affected by the November 2002 final rule should have been planning to comply with the requirements of that rule notwithstanding the outcome of any petitions for reconsideration. As previously stated by this agency, a pending petition for reconsideration does not toll the effective date of the subject final rule. NHTSA carefully considers all petitions for reconsideration arising from promulgation of new rules. After careful review, the agency decides whether to grant the petitions and whether to modify the rule. However, NHTSA's response to such petitions is prospective, and in the interim, the final rule remains effective as originally issued. Because the manufacturers cannot assume that the requested changes will be made in response to petitions for reconsideration, they must comply or take the necessary steps in order to timely comply with the original requirements of the subject final rule.

Notwithstanding our policy, we are extending the effective date to September 1, 2005, because this rulemaking makes several changes to the Vehicle Placard and Tire Inflation Pressure Label. We anticipate that preparing the placards or labels containing the necessary changes may require more than 6 months that is currently available until the previous effective date of September 1, 2004. Accordingly, the new effective date for vehicle labeling requirements is September 1, 2005. We note that the phase-in schedule also begins on September 1, 2005.

E. Conforming Amendments

The November 2002 final rule on tire labeling excluded motorcycle tires and specialty tires produced for antique vehicles (vehicles produced before 1975) from the applicability of FMVSS No. 139 labeling requirements. In the June 2003 final rule on tire performance upgrade, the agency additionally decided to exclude bias ply, special tires (ST) for trailers in highway service, tires for use on farm implements (FI) in agricultural service with intermittent highway use, and tires with rim diameters of 8 inches and below from the applicability of FMVSS No. 139 performance requirements and stated that these tires would continue to be covered by FMVSS Nos. 109 and 119. In making the latter decision, the agency noted that these tires represent a very small (less than 1 percent) segment of the market for light vehicle tires, are not

offered by any vehicle manufacturer on any new passenger car or light truck sold in the U.S., and that the number of miles that they are driven per year on highways is insignificant. For these same reasons, and to maintain consistent labeling and performance requirements for tires covered by FMVSS No. 109 and FMVSS No. 139, the agency has decided to make conforming amendments to the heading and application sections of FMVSS No. 139 in this final rule to exclude these same tires, bias ply, ST, FI, and 8–12 rim diameter tires, from the labeling provisions of FMVSS No. 139. As determined in the June 2003 final rule, these tires will continue to be covered by FMVSS No. 109 and 119.

V. Rulemaking Notices and Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking action was not reviewed under Executive Order 12866. The rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the action is to clarify existing requirements. It does not increase or decrease the legal obligations of any person under the November 2002 final rule. Thus, this action does not change the impacts estimated in the final regulatory evaluation for that rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the amendments would not have a significant economic impact on a substantial number of small entities.

The effect of the rulemaking action is to clarify existing requirements. Accordingly, this rulemaking will not change the effects of the November 2002 final rule on small business, small organizations and small governmental jurisdictions.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action does not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule does not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments, as it is here.

This final rule will not result in expenditures by State, local, or tribal governments or tire suppliers of more than $109 million annually.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

This final rule; response to petitions for information contains "collections of information," as that term is defined at 5 CFR part 1320 *Controlling Paperwork Burdens on the Public.* In the NPRM (66 FR 65535, December 19, 2001) and final rule (67 FR 69500, November 18, 2002), NHTSA provided the following burden hour estimates for the collections of information associated with this rulemaking, and provided 60-day public comment periods:

Revision of a Currently Approved Collection, OMB Clearance No. 2127–0503, Tires and Rim Labeling, and Vehicle Placard Requirements. In the November 18, 2002, document, NHTSA estimated that the final rule would result in an additional hourly burden to Clearance No. 2127–0503 of 111,539 hours for tire labeling and 25,184 hours for the vehicle placard requirements. NHTSA estimated the final rule would result in an initial cost burden for tire labeling of $23.4 million an annual cost burden for tire labeling of $0. The estimated total annual cost burden for vehicle placards is approximately $0.7 million.

In today's final rule, NHTSA is changing the scope of tire labeling requirements by permitting tire manufacturers to mark the optional code of the TIN on only one side of the tire, and to exclude retreaded tires from the requirement to have the TIN information on both sidewalls and the full TIN on the "intended outboard sidewall" of the tires. The changes should result in somewhat fewer burden hours imposed on tire manufacturers. However, especially in light of the small market share of retreaded tires, NHTSA will continue to ask for a clearance of an additional 111,539 hours for tire labeling for Clearance No. 2127–0503, to ensure that it is not underestimating its proposed burdens on the public. The estimated initial cost burden for tire labeling remains at $23.4 million.

For the collection of information associated with the vehicle placard and label, NHTSA is not changing the scope of the collection of information and is not amending its general prohibition against "other information" added to the vehicle placard and label. Thus, the estimated additional collection of information remains at 25,184 burden hours and $.07 million in cost burdens for the vehicle placard requirements.

Revision of a Currently Approved Collection, OMB Clearance No. 2127–0541, Consolidated Vehicle Owner's Manual Requirements of Motor Vehicles and Motor Vehicle Equipment. In the November 18, 2002, document, NHTSA estimated that the final rule would result in an additional hourly burden of 400 hours to Clearance No. 2127–0541, and estimated the total annual cost burden for revising the owner's manuals to be approximately $1.9 million.

In today's final rule, NHTSA is permitting the addition of metric values to the required statement in owner's manuals in determining the correct load limit. Since NHTSA does not believe this change will affect the estimated collection of information burden associated with the owner's manual requirement, the estimate remains at 400 burden hours and approximately $1.9 million in total annual cost burden.

Request for Approval of a New Collection, No OMB Clearance No, Tire Manufacturer Phase-In Reporting Requirements. In the November 18, 2002, document, NHTSA announced this new proposed collection of information, and estimated that total annual reporting and recordkeeping burden would be 6,048 hours. NHTSA estimated that there would be no costs resulting from this new collection because manufacturers are already compiling annual production information for their own uses. Today's final rule would not result in a change in the estimated number of burden hours or costs, but each report will be due from manufacturers a year later than the dates specified in the November 18, 2002, final rule. Thus, the manufacturers of new pneumatic tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less will provide tire production data yearly from September 1, 2005, through September 1, 2007.

NHTSA is preparing its request to OMB for clearance of the collections of information associated with this rulemaking. The public will have a 30-day period to provide comments on NHTSA's proposed collections when NHTSA's request reaches OMB.

H. 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 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov*.

VI. Regulatory Text

List of Subjects in 49 CFR Parts 571, 574, and 575

Imports, Certification, Consumer information, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

■ In consideration of the foregoing, the final rule amending 49 CFR parts 567, 571, 574, 575, and 597, published at 67 FR 69600 (November 18, 2002), as amended at 68 FR 33655 (June 5, 2003) by delaying the effective date, and further amended at 68 FR 37981 (June 26, 2003), is further amended by delaying the effective date from September 1, 2004, to September 1, 2005. In addition, parts 571, 574, and 575 are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.110 is amended by revising paragraph S4.3, adding paragraph S4.3.5, and revising Figures 1 and 2 at the end of § 571.110, to read as follows:

§ 571.110 Standard No. 110—Tire selection and rims for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.

* * * * *

S4.3 *Placard.* Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3 (a) through (g), and may show, at the manufacturer's option, the information specified in S4.3 (h) and (i), on a placard permanently affixed to the driver's side B-pillar. In each vehicle without a driver's side B-pillar and with two doors on the driver's side of the vehicle opening in opposite directions, the placard shall be affixed on the forward edge of the rear side door. If the above locations do not permit the affixing of a placard that is legible, visible and prominent, the placard shall be permanently affixed to the rear edge of the driver's side door. If this location does not permit the affixing of a placard that is legible, visible and prominent, the placard shall be affixed to the inward facing surface of the vehicle next to the driver's seating position. This information shall be in the English language and conform in color and format, not including the border surrounding the entire placard, as shown in the example set forth in Figure 1 in this standard. At the manufacturer's option, the information specified in S4.3 (e), (d), and, as appropriate, (h) and (i) may be shown, alternatively to being shown on the placard, on a tire inflation pressure label which must conform in color and format, not including the border surrounding the entire label, as shown in the example set forth in Figure 2 in this standard. The label shall be permanently affixed and proximate to the placard required by this paragraph. The information specified in S4.3 (e) shall be shown on both the vehicle placard and on the tire inflation pressure label (if such a label is affixed to provide the information specified in S4.3 (c), (d), and, as appropriate, (h) and (i)) may be shown in the format and color scheme set forth in Figures 1 and 2.

(a) Vehicle capacity weight expressed as "The combined weight of occupants and cargo should never exceed XXX kilograms or XXX pounds";

(b) Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure for front, rear and spare tires, subject to the limitations of S4.3.4;

(d) Tire size designation, indicated by the headings "original tire size" or "original size," and "spare tire" or "spare," for the tires installed at the time of the first purchase for purposes other than resale;

(e) On the vehicle placard, "Tire and Loading Information and, on the tire inflation pressure label, "Tire Information";

(f) "See Owner's Manual for Additional Information";

(g) For a vehicle equipped with a non-pneumatic spare tire assembly, the tire identification code with which that assembly is labeled pursuant to the requirements of S4.3(a) of 571.129, New Non-Pneumatic Tires for Passenger Cars;

(h) At the manufacturer's option, a bar code or VIN located vertically on the right-hand edge of the placard and label; and

(i) As appropriate, the tire load identification "XL" or "reinforced."

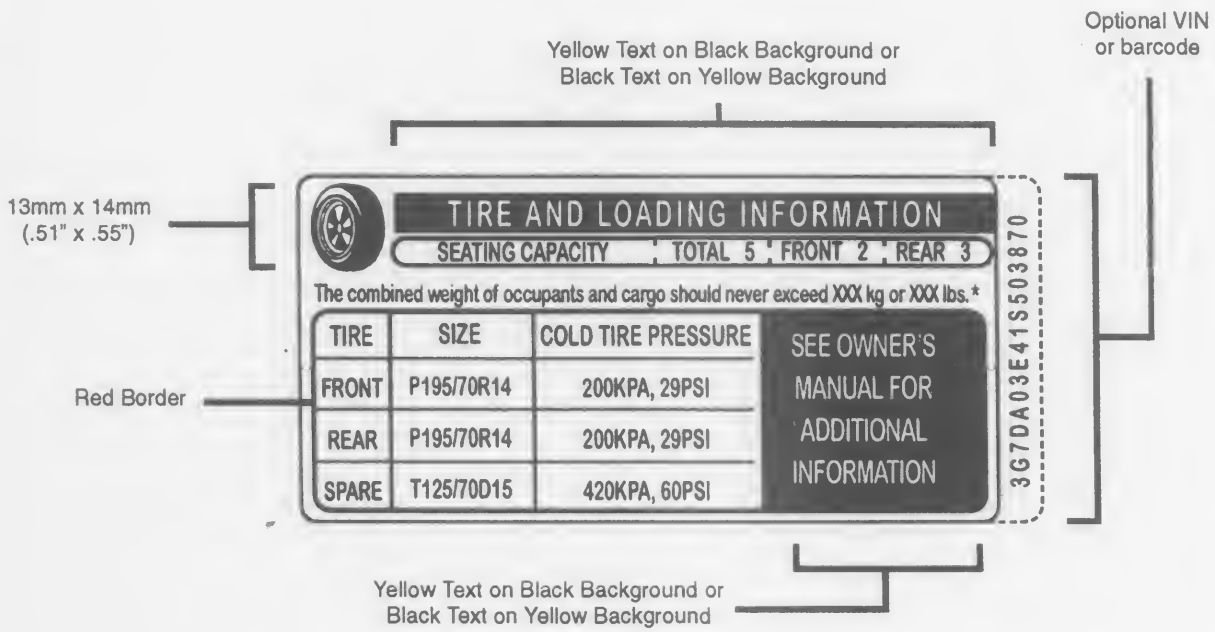
* * * * *

S4.3.5 *Requirements for trailers.* Each trailer, except for an incomplete vehicle, must show the information specified in S4.3 (c) through (g), and may show the information specified in S4.3 (h) and (i), on a placard permanently affixed proximate to the certification label specified in 49 CFR part 567. Additionally, each trailer must on its placard contain a cargo capacity statement expressed as "The weight of cargo should never exceed XXX kilograms or XXX pounds" in the same location on the placard specified for the "vehicle capacity weight" statement required by this standard. At the manufacturer's option, the information specified in S4.3 (c), (d), (h) and (i) may be shown, alternatively, on a tire inflation pressure label, and conform in color and format, not including the border surrounding the entire label, as specified in the example set forth in Figure 2 in this standard. The label shall be permanently affixed and proximate to the placard required by this paragraph. The information specified in S4.3 (e) shall be shown on both the vehicle placard and on the tire inflation pressure label (if such a label is affixed to provide the information specified in S4.3 (c), (d), (h) and (i)) in the format and color scheme set forth in Figures 1 and 2.

* * * * *

BILLING CODE 4910–59–P

Vehicle Placard



* For trailers, this statement should read:
The weight of cargo should not exceed XXX kg or XXX lbs.

Figure 1

Tire Inflation Pressure Label

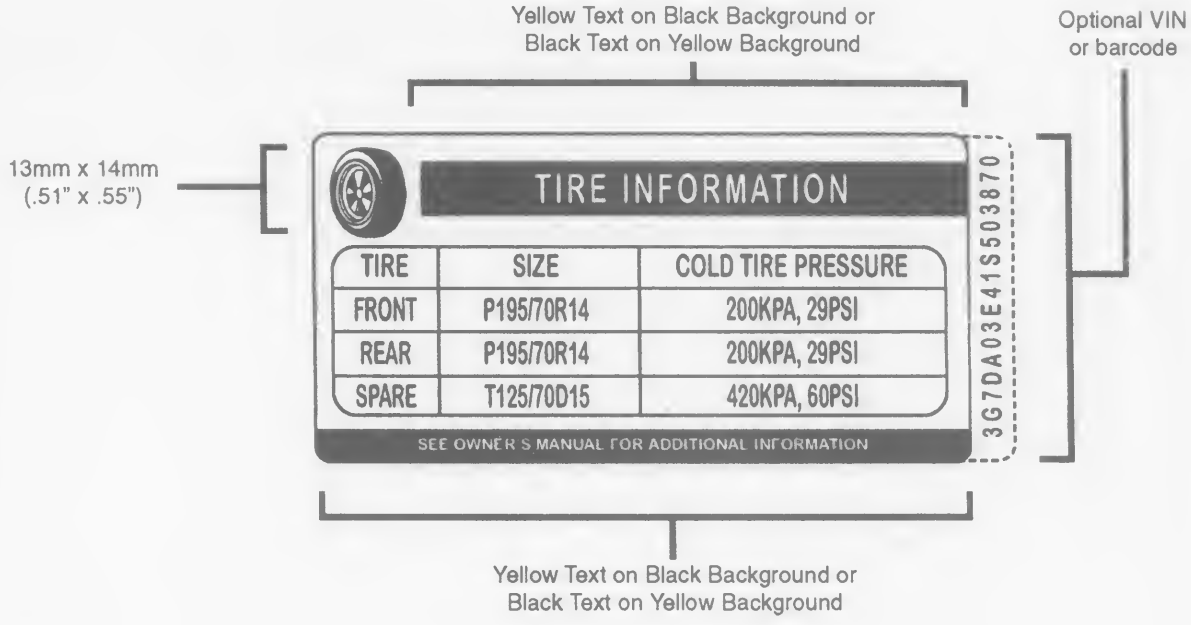


Figure 2

BILLING CODE 4910–59–C

■ 3. Section 571.117 is amended by revising paragraphs S6.3, S7.1, S7.2 and S7.3 to read as follows:

§ 571.117 Standard No. 117; Retreaded pneumatic tires.

* * * * *

S6.3. *Labeling.* Each retreaded tire shall comply, according to the phase-in schedule specified in S7 of this standard, with the requirements of S5.5 and S5.5.1 of § 571.139.

* * * * *

S7.1. *Tires retreaded on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S6.3 of this standard must be equal to not less than 40% of the retreader's production during that period.

S7.2. *Tires retreaded on or after September 1, 2006 and before September 1, 2007.* For tires manufactured on or after September 1, 2006 and before September 1, 2007, the number of tires complying with S6.3 of this standard must be equal to not less than 70% of the retreader's production during that period.

S7.3. *Tires retreaded on or after September 1, 2007.* Each tire must comply with S6.3 of this standard.

■ 4. Section 571.129 is amended by revising paragraphs S4.3, S7.1, S7.2 and S7.3 to read as follows:

§ 571.129 Standard No. 129; New non-pneumatic tires for passenger cars.

* * * * *

S4.3. *Labeling requirements.* Each new non-pneumatic tire shall comply, according to the phase-in schedule specified in S7 of this standard, with the requirements of S5.5 and S5.5.1 of § 571.139.

* * * * *

S7.1. *Tires manufactured on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S4.3 of this standard must be equal to not less than 40% of the manufacturer's production during that period.

S7.2. *Tires manufactured on or after September 1, 2006 and before September 1, 2007.* For tires manufactured on or after September 1, 2006 and before September 1, 2007, the number of tires complying with S4.3 of this standard must be equal to not less than 70% of the manufacturer's production during that period.

S7.3. *Tires manufactured on or after September 1, 2007.* Each tire must comply with S6.3 of this standard.

■ 5. Section 571.139 is amended by revising its heading, S2, S5.5, S5.5.1, 5.5.4, S7.1, S7.2 and S7.3 to read as follows:

§ 571.139 Standard No. 139; New pneumatic radial tires for light vehicles.

* * * * *

S2. *Application.* This standard applies to new pneumatic radial tires for use on motor vehicles (other than

motorcycles and low speed vehicles) that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less and that were manufactured after 1975. This standard does not apply to special tires (ST) for trailers in highway service, tires for use on farm implements (FI) in agricultural service with intermittent highway use, and tires with rim diameters of 8 inches and below.

* * * * *

S5.5 *Tire Markings.* Except as specified in paragraphs (a) through (h) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5 (a) through (d) and on one sidewall with the information specified in S5.5 (e) through (h) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inch.

(a) The symbol DOT, which constitutes a certification that the tire conforms to applicable Federal motor vehicle safety standards;

(b) The tire size designation as listed in the documents and publications specified in S4.1.1 of this standard;

(c) The maximum permissible inflation pressure, subject to the limitations of S5.5.4 through S5.5.6 of this standard;

(d) The maximum load rating;

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different;

(g) The term "tubeless" or "tube type," as applicable; and

(h) The word "radial," if the tire is a radial ply tire.

S5.5.1 *Tire identification number.*

(a) *Tires manufactured before September 1, 2009.* Each tire must be labeled with the tire identification number required by 49 CFR part 574 on a sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.

(b) *Tires manufactured on or after September 1, 2009.* Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.

* * * * *

S5.5.4 For passenger car tires, if the maximum inflation pressure of a tire is 240, 280, 290, 300, 330, 340, 350 or 390 kPa, then:

(a) Each marking of that inflation pressure pursuant to S5.5(c) must be followed in parenthesis by the equivalent psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S5.5(d) in kilograms must be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

* * * * *

S7.1 *Tires manufactured on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S4, S5.5, S5.5.1, S5.5.2, S5.5.3, S5.5.4, S5.5.5, and S5.5.6 of this standard must be equal to not less than 40% of the manufacturer's production during that period.

S7.2 *Tires manufactured on or after September 1, 2006 and before September 1, 2007.* For tires manufactured on or after September 1, 2006 and before September 1, 2007, the number of tires complying with S4, S5.5, S5.5.1, S5.5.2, S5.5.3, S5.5.4, S5.5.5, and S5.5.6 of this standard must be equal to not less than 70% of the manufacturer's production during that period.

S7.3 *Tires manufactured on or after September 1, 2007.* Each tire must comply with S4, S5.5, S5.5.1, S5.5.2, S5.5.3, S5.5.4, S5.5.5, and S5.5.6 of this standard.

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

■ 6. The authority citation for 49 CFR part 574 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, 1411–1420, 1421; delegation of authority at CFR 1.50.

■ 7. Section 574.5 is amended by revising paragraph (d) to read as follows:

§ 574.5 Tire identification requirements.

* * * * *

(d) *Fourth grouping.* The fourth grouping, consisting of four numerical symbols, must identify the week and year of manufacture. The first two symbols must identify the week of the year by using "01" for the first full calendar week in each year, "02" for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include not more than 6 days of the following year. The third and fourth symbols must identify the year. Example: 0101 means the 1st week of 2001, or the week beginning Sunday, January 7, 2001, and ending Saturday, January 13, 2001. The symbols signifying the date of manufacture shall immediately follow the optional descriptive code (paragraph (c) of this section). If no optional descriptive code is used, the symbols signifying the date of manufacture must be placed in the area shown in Figures 1 and 2 of this section for the optional descriptive code.

* * * * *

PART 575—CONSUMER INFORMATION

■ 8. The authority citation for part 575 continues to read as follows:

Authority: 15 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at CFR 1.50.

■ 9. Section 575.6 is amended by revising paragraphs (a)(4) introductory text and (a)(5) to read as follows:

§ 575.6 Requirements.

* * * * *

(a) * * *

(4) When a motor vehicle that has a GVWR of 10,000 pounds or less, except a motorcycle or low speed vehicle, and that is manufactured on or after

September 1, 2005, is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, a discussion of the items specified in paragraphs (a)(4)(i) through (v) of this section in the owner's manual, or, if there is no owner's manual, in a document:

* * * * *

(5) When a motor vehicle that has a GVWR of 10,000 pounds or less, except a motorcycle or low speed vehicle, and that is manufactured on or after September 1, 2005, is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, the following verbatim statement, as applicable, in the owner's manual, or, if there is no owner's manual, in a document:

(i) For vehicles except trailers: "Steps for Determining Correct Load Limit—

(*1*) Locate the statement "The combined weight of occupants and cargo should never exceed XXX kg or XXX lbs." on your vehicle's placard.

(*2*) Determine the combined weight of the driver and passengers that will be riding in your vehicle.

(*3*) Subtract the combined weight of the driver and passengers from XXX kg or XXX lbs.

(*4*) The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the "XXX" amount equals 1400 lbs. and there will be five 150 lb passengers in your vehicle, the amount of available cargo and luggage load capacity is 650 lbs. (1400–750 (5 × 150) = 650 lbs.)

(*5*) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.

(*6*) If your vehicle will be towing a trailer, load from your trailer will be transferred to your vehicle. Consult this manual to determine how this reduces the available cargo and luggage load capacity of your vehicle."

(ii) For trailers: "Steps for Determining Correct Load Limit—

(*1*) Locate the statement "The weight of cargo should never exceed XXX kg or XXX lbs." on your vehicle's placard.

(*2*) This figure equals the available amount of cargo and luggage load capacity."

(*3*) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity.

PART 597—TIRES FOR MOTOR VEHICLES WITH A GVWR OF 10,000 POUNDS OR LESS PHASE-IN REPORTING REQUIREMENTS

■ 10. The authority citation for part 597 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at CFR 1.50.

■ 11. Section 597.6 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 597.6 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2006 and August 31, 2007, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 139 (49 CFR 571.139) for its tires produced in that year for motor vehicles with a GVWR of 10,000 pounds or less. * * *

* * * * *

Issued: May 20, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–11963 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 031003245–4160–02; I.D. 122702A]

RIN 0648–AR14

Designation of the AT1 Group of Transient Killer Whales as a Depleted Stock Under the Marine Mammal Protection Act (MMPA)

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to designate the AT1 group of transient killer whales as a depleted stock of marine mammals pursuant to the MMPA. This action is based upon a status review conducted by NMFS in response to a petition to designate as depleted a group of transient killer whales in Alaska (known as the AT1 group). The biological evidence indicates that the group is a population stock and that the stock is depleted as these terms are defined in the MMPA. This action is intended to promote the goals and objectives of MMPA.

DATES: Effective July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Kaja Brix NOAA/NMFS, Alaska Region, (907) 586–7235; or email at *kaja.brix@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Information related to the petition and the status of the AT1 group of killer whales is available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/whales/default.htm.*

NMFS guidelines for preparing stock assessment reports, which contain guidance for identifying population stocks of marine mammals, may be found on the Internet at the following address: *http://nmml.afsc.noaa.gov/library/gammsrep/gammsrep.htm.*

Background

NMFS received a petition on November 13, 2002, from the National Wildlife Federation, on behalf of itself, Alaska Center for the Environment, Alaska Community Action on Toxics, Center for Biological Diversity, Coastal Coalition, Defenders of Wildlife, and Eyak Preservation Council, to designate the AT1 group of transient killer whales as a depleted population stock under the MMPA. NMFS published a notice that the petition was available (67 FR 70407, November 22, 2002). After evaluating the petition, NMFS determined that the petition contained substantial information indicating that the petitioned action may be warranted (68 FR 3483, January 24, 2003). Following its determination that the petitioned action may be warranted, NMFS conducted a status review to evaluate whether the AT1 group is a population stock and, if so, whether that stock is depleted. (The report of the status review is available in electronic form; see "Electronic Access".) The status review concluded, based on the best scientific information available, that the AT1 group is a separate stock of killer whales. The status review also concluded, based on the best scientific information available, that the AT1 stock is depleted, as defined under the MMPA. Based on the status review, a proposed rule to designate the AT1 group of transient killer whales as a depleted stock under the MMPA was published in the **Federal Register** on October 24, 2003 (68 FR 60899), with a 60–day public comment period ending January 22, 2004.

This final rule designates the AT1 group of transient killer whales as a depleted stock under the Marine Mammal Protection Act. No additional regulations are associated with this designation.

Comments and Responses

NMFS received 74 letters on the proposed rule containing 12 distinct categories of comments. A summary of these comments and NMFS' responses are included below.

Comment 1: The full range of scientifically plausible explanations for the AT1 pod's identity, stock status, and relationship to the ever-changing environment of Prince William Sound has not been considered in this determination.

Response: NMFS described a wide range of alternatives for the AT1 group's origin in the report of the status review; these alternatives were summarized in the preamble of the proposed rule along with a request for additional information related to AT1 killer whales. No new alternatives were identified in comments on the proposed rule.

The full range of options for the status of the stock pursuant to the petition is satisfied by considering whether the stock is depleted. NMFS described sufficient evidence in the report of the status review and in the preambles to the proposed rule and this final rule (see discussion under the heading "The Depleted Determination") that the status of the stock is "depleted".

The relationship between AT1 killer whales and their environment is not entirely known. NMFS made its determination based upon the standard required by the MMPA, which is best scientific information available.

Comment 2: There is no evidence that the group has ever reproduced and no documented trends of abundance. The proposed determination had very little discussion on environmental variation and possible effects on AT1.

Response: The report of the status review noted that when the AT1 group was first identified in 1984, there were juvenile animals in the group. These juveniles are the best available evidence that the killer whales in this population stock have reproduced.

The group contained 22 whales in 1984, 11 whales after 1989, and now has 9 or fewer whales. These numbers demonstrate a decline in the abundance from 1984 to present (also see response to comment 3).

The status review and the proposed rule to designate the AT1 group as a depleted stock state that no information is available on historical abundance of the Eastern North Pacific transient stock of killer whales or Alaska transients to provide abundance trends, but that there has been documented a decline in the AT1 group of killer whales since 1984. Environmental variability and its effects on AT1 killer whales are not documented; therefore, they were not discussed in the proposed rule.

Comment 3: There has been an apparent decline in the population since the Exxon Valdez oil spill. Was this documented by a census or an estimate?

Response: The decline was documented by a series of censuses.

Comment 4: Seasonal observations on interactions between killer whale groups are relatively subjective when examining interactions between killer whale groups. Using genetic information to calculate "migrant/generation" would be more useful and scientifically defensible.

Response: Although most observations of AT1 killer whales have been made in summer months, association patterns in other killer whale populations seen more frequently year-round have not shown any changes in association patterns through the year. Therefore, no evidence exists that suggests that summer association patterns cannot be used as evidence for population structure. Mitochondrial DNA analysis and two forms of microsatellite DNA analysis were conducted, and all 3 analyses supported the hypothesis that the AT1 group represents a separate population. Although calculating the number of migrants per generation may be useful for some purposes (such as an analysis of whether a putative population could sustain a certain level of bycatch because immigration from another population was sufficient to replace the animals removed), such an analysis was not necessary for this final rule.

Comment 5: The stated "K" values were set in 1984. There has been no re-evaluation that takes into account the profoundly changing habitat in Prince William Sound over the last 20 years. The "K" value could be highly variable in a rapidly changing environment.

Response: NMFS has not established a numerical value for carrying capacity (K) for AT1 killer whales. The 1984 abundance is used to demonstrate that the population is currently less than 60 percent of its abundance in the recent past and that the population stock is, therefore, depleted. The actual values for K and Maximum Net Productivity Level (MNPL) are currently unknown and will be addressed in the conservation plan prepared for this stock.

Comment 6: Based on the evidence presented in the petition to list this group as a stock and designate it as depleted and on further information in the proposed rule, the AT1 whales qualify under the MMPA and NMFS' implementing regulations as a depleted stock.

Response: NMFS concurs and is designating the group as a depleted stock of marine mammals.

Comment 7: The depleted designation should lead to the development of more detailed information on the threats facing this population and appropriate actions to respond to these threats.

Response: These issues will be considered in the development of the conservation plan for this stock.

Comment 8: Because the AT1 population is in danger of extinction throughout a significant part - possibly all - of its range and is likely to become extinct within the foreseeable future, the proper application of the scientific data shows that NMFS must list the stock as endangered under the Endangered Species Act (ESA).

Response: This final rule is the result of a process initiated by the receipt of a petition submitted to NMFS requesting that the AT1 group be designated as a depleted stock under the MMPA. An evaluation of the status of AT1 killer whales under the ESA would include an analysis to determine whether the stock is a distinct population segment and, if so, whether the group is in danger of going extinct throughout all or a significant portion of its range. Such an evaluation was beyond the scope of the petition NMFS received.

Comment 9: NMFS should develop a long-term research plan for North Pacific killer whales.

Response: Comprehensive research needed to assist in the recovery of the AT1 killer whales will be identified in a conservation plan. In a broader perspective, NMFS currently conducts research on killer whale demographics in the North Pacific through research at the National Marine Mammal Laboratory and through grants provided to independent researchers. NMFS will consider approaches to incorporate current efforts and planning into a coordinated long-term research plan for North Pacific killer whales.

Comment 10: NMFS has stated that a catastrophic oil spill is the single greatest threat to the stock. The AT1 group has already undergone this event. Given the data available, it is clear fifteen years after the oil spill that no designation or conservation plan could achieve recovery.

Response: The designation of this group of killer whales as a depleted stock is separate from the development of conservation measures to promote the population's recovery, and the designation is based upon the stock's abundance compared to its OSP. The potential effectiveness of the conservation plan is not a criterion for consideration in designating a stock as depleted. Regulatory measures identified in a conservation plan to conserve and restore the stock would require separate regulatory action, and appropriate economic analyses would be conducted during such rulemaking. Public comments on those proposed actions would be part of the rulemaking process.

Comment 11: A conservation plan may offer no prospects for recovery yet may potentially jeopardize the lives and livelihoods of those who depend on the resources of Prince William Sound, including a fishery that has no documented history of interactions with the AT1 group.

Response: Conservation measures not likely to promote recovery of the stock would not be included in a conservation plan. In addition, see response to Comment 10.

Comment 12: The relationship between vessel noise and highly mobile and opportunistic predators, such as the AT1 group of killer whales, is speculative at this time. Reduction of vessel noise as a conservation tool should be supported by peer-reviewed science prior to being implemented.

Response: In the conservation plan, NMFS will analyze available scientific information in determining whether conservation measures regarding vessel noise are necessary to conserve and restore the stock. Any necessary regulatory measures to conserve and restore the stock would require separate regulatory action with information to support it. (see also response to comment 10).

Changes From the Proposed Rule

The final rule contains no changes from the proposed rule.

The Depleted Determination

Because the AT1 group was part of the Eastern North Pacific transient stock of killer whales prior to this action, the determination required two steps. First, available evidence was evaluated to determine whether the group is a population stock under the MMPA. If so, the second step was to determine whether the abundance of the newly identified population stock is below its optimum sustainable population (OSP) and, therefore, depleted.

The AT1 Group as a Stock

NMFS' guidelines for assessing marine mammal stocks (See Electronic Access) include guidelines for identifying population stocks of marine mammals which state that many different types of information can be used to identify stocks, reproductive isolation is proof of demographic isolation, and demographically isolated groups of marine mammals should be identified as separate stocks. These guidelines were based upon the MMPA's definition of population stock and the purposes and polices of the MMPA. The biological information discussed in the report of the status review and in the preamble of the proposed rule, particularly molecular genetics and associations (distribution and movements), supports a determination that AT1 killer whales are demographically isolated from other groups of killer whales. Therefore, based upon the best scientific information available, NMFS has determined that the AT1 group of transient killer whales is a population stock.

Status of the Stock

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term, "depletion" or "depleted", as any case in which "the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals ... determines that a species or population stock is below its optimum sustainable population." Section 3(9) of the MMPA defines OSP "...with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." NMFS' regulations at 50 CFR 216.3 clarify the definition of OSP as a population size which falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem (K) to MNPL. MNPL is population size expected to produce the greatest net annual increment (increase) in population numbers resulting from additions due to reproduction less losses due to natural mortality.

A population stock below its MNPL is, by definition, below OSP and, thus, depleted under the MMPA. Historically, the estimated MNPL has been expressed as a range of values, generally 50 to 70 percent of K (42 FR 12010, March 1, 1977). In 1977, the midpoint of this range (60 percent of K) was used to determine whether dolphin stocks in the eastern tropical Pacific Ocean were depleted under the MMPA (42 FR 64548, December 27, 1977). The 60–percent-of-K value was used in the final rule governing the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean (45 FR 72178, October 31, 1980) and has been used since that time for other status reviews under the MMPA. For stocks of marine mammals, including killer whales, K is generally unknown. NMFS, therefore, has used the best available estimate of a stock's maximum historical abundance as a proxy for K.

As required by the MMPA, NMFS initiated consultation with the Marine Mammal Commission related to the petition to designate the AT1 group of killer whales as a depleted population stock. In a letter dated December 23, 2002, the Commission noted that there were uncertainties regarding the relationships of the AT1 group to other killer whales in the North Pacific. The Commission recommended as a precautionary approach that, until these uncertainties are resolved, NMFS should designate the AT1 group of transient killer whales as a depleted stock.

There is no information on population trends or historical abundance of the Eastern North Pacific transient stock of killer whales, of which the AT1 group was a part prior to this final rule. Similarly there is insufficient historical data on Alaska transients to provide information on trends in abundance in Alaska. The AT1 group is the only stock of transient whales whose recent history is known.

The available information, which was described in detail in the report of the status review and summarized in the preamble to the proposed rule, supports the conclusion that the AT1 group is a population stock of marine mammals. The genetics data suggest that the stock size was larger than 22 animals prior to 1984. However, its abundance prior to 1984 is unknown. Consequently, there is no estimate for the maximum historical abundance. In 1984, the stock had 22 members, and its current abundance has been reduced to nine or fewer whales. The current abundance is less than 60 percent of the known abundance in 1984; therefore, the stock is below its MNPL (the lower limit of its OSP). Consequently, the stock meets the statutory definition of depleted. Based on the best scientific information available, NMFS is designating the AT1 group of transient killer whales in Alaska as a depleted population stock under the MMPA.

References

References are available upon request (See **FOR FURTHER INFORMATION CONTACT**).

Classification

This final rule is exempt from listing for the purposes of Executive Order 12866. Depletion designations under the MMPA are similar to ESA listing decisions, which are exempt from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act. See NOAA Administrative Order 216–6.03(e)(1). Thus, NMFS has determined that the depletion designation of this stock under the MMPA is exempt from the requirements of the National Environmental Policy Act of 1969, and an Environmental Assessment or Environmental Impact Statement is not required.

At the proposed rule stage, the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification or the economic impact of the rule. As a result, no regulatory flexibility analysis is required, and none has been prepared.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980. This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: May 28, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise noted.

■ 2. In § 216.15,a new paragraph (i) is added to read as follows:

§ 216.15 Depleted species.

* * * * *

(i) AT1 stock of killer whales (*Orcinus orca*). The stock includes all killer whales belonging to the AT1 group of transient killer whales occurring primarily in waters of Prince William Sound, Resurrection Bay, and the Kenai Fjords region of Alaska.

[FR Doc. 04–12597 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 107
Thursday, June 3, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–06–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 707 and 720 series airplanes, that currently requires inspections of the upper and lower chords of the wing front and rear spars, repair if necessary, and application of corrosion inhibitor to the inspected areas. This action would remove the requirements of the existing AD, require new detailed inspections and new high frequency eddy current (HFEC) inspections for corrosion and cracking, and require certain related follow-on and investigative actions, if necessary. This action also would expand the area of inspection to include the dry bay areas. The actions specified by the proposed AD are intended to find and fix corrosion and stress corrosion cracking of the upper and lower chords on the wing front and rear spars, which could result in reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 19, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–06–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–06–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 11, 2001, the FAA issued AD 2001–08–02, amendment 39–12179 (66 FR 20383, April 23, 2001), applicable to all Boeing Model 707 and 720 series airplanes, to require inspections of the upper and lower chords of the wing front and rear spars, repair if necessary, and application of corrosion inhibitor to the inspected areas. That action was prompted by a report indicating that a 31-inch crack was found in the radius of the lower chord of the wing front spar in the dry bay area between wing stations 360 and 400. Investigation revealed that 19 inches of the crack were due to stress corrosion, while the remainder was due to ductile separation. The requirements of that AD are intended to find and fix stress corrosion cracking of the upper and lower chords on the wing front and rear spars, which could result in reduced structural integrity of the wing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received a report indicating that an operator had found a 31-inch crack during a routine inspection six months after it had done the inspection described in Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985 (a referenced source of service information in AD 2001–08–02).

Explanation of Relevant Service Information

We have reviewed and approved Boeing 707 Alert Service Bulletin A3240, Revision 4, dated September 6, 2001. Revision 4 puts more emphasis than Revision 3 on the detailed inspections for corrosion of the upper and lower chords on the front and rear spars, adds a new high frequency eddy current (HFEC) inspection for corrosion and cracking, and expands the area of inspection to include the dry bay areas of the wings. Revision 4 also describes procedures for repair of corrosion and follow-on actions (removing finish, applying a chemical film treatment and primer to certain areas, measuring depth of any removed material, and accomplishing further HFEC inspections, if necessary) for conditions within certain areas or limits. For certain conditions outside the areas or limits specified by Revision 4, the service bulletin specifies that operators contact Boeing for repair. Revision 4 also specifies that operators contact Boeing for any cracking that is found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Pertinent requirements of existing ADs are generally restated in a proposed AD. However, due to the complexity of the requirements of AD 2001–08–02 and the fact that some of the requirements of that AD are no longer correct or necessary, we have clarified in Note 1 of this proposed AD that the requirements specified in this proposed AD remove the requirements specified in AD 2001–08–02. We have determined that the actions and compliance times specified in this proposed AD would adequately address the identified unsafe condition in a timely manner.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of actions specified in Revision 4 of Boeing 707 Alert Service Bulletin A3240, dated September 6, 2001. Except as described below, the actions would be required to be accomplished in accordance with Revision 4.

Difference Between the Service Bulletin and the Proposed AD

Although the service bulletin specifies that operators should contact the manufacturer for certain conditions outside the limits specified in the service bulletin and for disposition of any cracking found, this proposed AD would require operators to repair such conditions or cracking per a method approved by the FAA.

Additionally, where the service bulletin recommends doing the detailed inspections described in Boeing All Base Message M–7200–01–00062 within 30 days after the release of the service bulletin, this proposed AD would require accomplishment of the detailed inspections of the areas per Revision 4 of Boeing 707 Alert Service Bulletin A3240, dated September 6, 2001, within 30 days after the effective date of the AD.

Where the service bulletin specifies applying BMS 3–23 corrosion inhibitor or a Boeing approved equivalent, this proposed AD would require that any application of an equivalent corrosion inhibitor be approved by the FAA.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 230 airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD.

The new actions that are proposed in this AD would not include those actions required by AD 2001–08–02. Therefore, cost impact figures for those actions are not necessary nor provided for in this proposed AD.

The new actions that are proposed in this AD action would take approximately 212 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $578,760, or $13,780 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by removing amendment 39–12179 (66 FR 20383, April 23, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2003–NM–06–AD. Supersedes AD 2001–08–02, Amendment 39–12179.

Applicability: All Model 707 and 720 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix corrosion and stress corrosion cracking of the upper and lower

spar chords on the front and rear spars of the wing, which could result in reduced structural integrity of the wing, accomplish the following:

Superseding the Requirements of AD 2001–08–02

Note 1: As of the effective date of this AD, the requirements of AD 2001–08–02, amendment 39–12179, are no longer effective or required.

Definition of Service Bulletin

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3240, Revision 4, dated September 6, 2001.

Detailed Inspection

(b) Within 30 days after the effective date of this AD, do a detailed inspection of the entire length of the external surfaces of the front and rear wing spar chords and the internal surfaces of the front spar chords in the dry bays of the wings for corrosion, any signs of corrosion (*e.g.*, blistering or signs of fuel leaks), or cracking; per the Accomplishment Instructions of the service bulletin. If no corrosion or cracking is found, before further flight: Except as specified in paragraph (e) of this AD, accomplish any applicable follow-on actions or investigative actions, per the Accomplishment Instructions of the service bulletin.

Other Repetitive Inspections

(c) Within 6 months after the effective date of this AD, perform a detailed inspection and a high frequency eddy current (HFEC) inspection of the entire length of the external surfaces of the front and rear wing spar chords and the internal surfaces of the front spar chords in the dry bays of the wings for any corrosion, signs of corrosion (*e.g.*, blistering or signs of fuel leaks), or cracking; per the Accomplishment Instructions of the service bulletin. If no corrosion or cracking is found, before further flight, accomplish any applicable follow-on or investigative actions specified in the Accomplishment Instructions of the service bulletin and the actions specified in paragraph (e) of this AD. Thereafter, repeat the detailed and HFEC inspections at intervals not to exceed 12 months.

Repair of Corrosion

(d) If any corrosion or signs of corrosion (*e.g.*, blistering or signs of fuel leaks) are found during any inspection required by this AD: Before further flight, repair per paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If the corrosion is within the areas and limits specified in the service bulletin: Except as required by paragraph (e) of this AD, repair and accomplish all applicable follow-on and investigative actions, per the Accomplishment Instructions of the alert service bulletin.

(2) If the corrosion is outside the areas or limits specified in the service bulletin, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Application of Corrosion Inhibitor

(e) Where the Accomplishment Instructions of the service bulletin specifies to apply BMS 3–23 (a corrosion inhibitor) or a Boeing approved equivalent, this AD requires that BMS 3–23 must be used or that any application of an equivalent corrosion inhibitor be approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Repair of Cracking

(f) If any cracking is found during any inspection required by this AD, including cracks that have been previously stop-drilled but not permanently repaired: Before further flight, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD. Operators should note that "stop drilling" of cracks as a means to defer repair is not permitted by this AD.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on May 26, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12576 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Grob-Werke Gmbh & Co KG Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2001–26–25, which applies to all Grob-Werke Gmbh & Co KG (Grob) Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III sailplanes. AD 2001–26–25 currently requires you to apply a red mark and install a placard on the airspeed indicator to restrict the Vne airspeed. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. Consequently, this proposed AD would require you to install additional mass balance in the elevator and ailerons and determine resultant empty weight and empty weight center of gravity; incorporate a revision in the sailplane maintenance manual; and remove the red mark and the red placard on the airspeed indicator (both required by AD 2001–26–25). We are issuing this proposed AD to prevent elevator flutter, which could cause structural damage. Such damage could result in loss of control of the sailplane.

DATE: We must receive any comments on this proposed AD by July 1, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–10–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2004–CE–10–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–10–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2004–CE–10–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

Has FAA taken any action to this point? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, reported that during flight operation of Model G102 CLUB ASTIR IIIb sailplanes, two events of elevator flutter occurred in the upper flight speed range due to unknown causes. This resulted in us issuing AD 2001–26–25, Amendment 39–12591 (67 FR 809, January 8, 2002).

AD 2001–26–25 currently requires the following on Grob Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III sailplanes:

—Application of a red mark on the airspeed indicator at 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration); and

—Installation of a red placard to the airspeed indicator restricting the Vne airspeed to 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration).

What has happened since AD 2001–26–25 to initiate this proposed action? The LBA recently notified FAA of the need to change AD 2001–26–25. As a result of extensive tests and calculations, the LBA has determined that operation within the original margins can be approved if additional mass balance is installed in the elevators and ailerons.

Additionally, the LBA has determined that the operation with restricted Vne airspeed to 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration) is permitted to continue until additional mass balance is installed in the elevator and ailerons.

What is the potential impact if FAA took no action? Elevator flutter could cause structural damage. Such damage could result in loss of control of the sailplane.

Is there service information that applies to this subject? Grob has issued the following:

—Service Bulletin No. MSB306–36/3, dated December 4, 2002;

—Service Installation Instructions No. MSB306–36/3, dated April 18, 2002; and

—Instructions for Continued Airworthiness GROB G 102, Revision 1, dated April 18, 2002.

What are the provisions of this service information? This service information includes procedures for:

—Installing additional mass balance in the elevator and ailerons and determining empty weight and empty weight center of gravity after installing any additional mass balance;

—Incorporating Revision 2, dated December 4, 2002, in the sailplane maintenance manual or other appropriate document; and

—Removing the red mark on the airspeed indicator (required by AD 2001–26–25) at 165 km/h, 89.1 kts, or 102.5 mph.

What action did the LBA take? The LBA classified this service information as mandatory and issued German AD Number 2001–317/4, dated January 9, 2003, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These Grob Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Grob Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent elevator flutter, which could cause structural damage. Such damage could result in loss of control of the sailplane.

What would this proposed AD require? This proposed AD would supersede AD 2001–26–25 with a new AD that would incorporate the actions in the previously-referenced service bulletin and require removing the red placard to the airspeed indicator (currently required by AD 2001–26–25) restricting the Vne airspeed to 165 km/h, 89.1 kts, or 102.5 mph (according to the airspeed indicator calibration).

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 50 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to do this proposed modification to install additional mass balance in the elevator and ailerons and determine the empty weight and empty weight center of gravity; incorporate a revision in the applicable sailplane maintenance manual; and remove the red mark on the airspeed indicator and the red placard to the airspeed indicator:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
10 workhours × $65 per hour = $650	Not Applicable	$650	$32,500

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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 summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2004–CE–10–AD" in your request.

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 Federal Aviation Administration 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 removing Airworthiness Directive (AD) 2001–26–25, Amendment 39–12591 (67 FR 809, January 8, 2002), and by adding a new AD to read as follows:

Grob-Werke Gmbh & Co KG: Docket No. 2004–CE–10–AD.

When Is the Last Date I Can Submit Comments on this Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by July 1, 2004.

What Other ADs Are Affected By This Action?

(b) This AD supersedes AD 2001–26–25.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following Models G102 CLUB ASTIR III, G102 CLUB ASTIR IIIb, and G102 STANDARD ASTIR III sailplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent elevator flutter, which could cause structural damage. Such damage could result in loss of control of the sailplane.

What Must I Do to Address This Problem?

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Install additional mass balance in the elevator and ailerons and determine resultant empty weight and empty weight center of gravity.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB306–36/3, dated December 4, 2002; GROB Luft-und Raumfahrt Service Installation Instructions No. MSB306–36/3, dated April 18, 2002; and Instructions for Continued Airworthiness GROB G 102, Revision 1, dated April 18, 2002. The applicable sailplane maintenance manual also addresses this issue.
(2) Incorporate Instructions for Continued Airworthiness GROB G 102, Revision 1, dated April 18, 2002, in the sailplane maintenance manual, or other appropriate document.	Before further flight after installing the additional mass balance and determining the empty weight and empty weight center of gravity required by paragraph (d)(1) of this AD.	Not Applicable.
(3) Remove the red mark on the airspeed indicator (formerly required by AD 2001–26–25) at 165 kilometers/hour (km/h), 89.1 knots (kts), or 102.5 miles per hour (mph).	Before further flight after installing the additional mass balance and determining the empty weight and empty weight center of gravity required by paragraph (d)(1) of this AD.	Follow GROB Luft-und Raumfahrt Service Bulletin No. MSB306–36/3, dated December 4, 2002, and GROB Luft-und Raumfahrt Service Installation Instructions No. MSB306–36/3, dated April 18, 2002. The applicable sailplane maintenance manual also addresses this issue.
(4) Remove the red placard to the airspeed indicator (formerly required by AD 2001–26–25) restricting the Vne airspeed to 165 km/h, 89.1 kts. or 102.5 mph (according to the airspeed indicator calibration).	Before further flight after installing the additional mass balance and determining the empty weight and empty weight center of gravity required by paragraph (d)(1) of this AD.	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane. Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 49 8268 998139; facsimile: 49 8268 998200. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(h) German AD Numbers 2001–317/4, dated January 9, 2003, and 2001–317/3, dated November 14, 2002, also address the subject of this AD.

Issued in Kansas City, Missouri, on May 25, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12575 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–04–17980]

RIN 2127–AI38.

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, NHTSA proposes to amend the Federal motor vehicle safety standard for seat belt assemblies to redefine the requirements and to establish a new test methodology for emergency-locking retractors. This rulemaking is in response to a petition for rulemaking submitted by a trade association representing manufacturers of occupant restraints. If adopted, the amendments would establish a new acceleration corridor, add a figure illustrating the acceleration corridor, provide tolerance on angle measurements, and employ the same instrumentation specifications currently found in other Federal motor vehicle safety standards containing crash tests.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than August 2, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number—04–17980] by the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Submission of Comments heading under the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Analysis and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact William Fan, Office of Crashworthiness Standards, at (202) 366–4922, and fax him at (202) 493–2739.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366–2992, and fax him at (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The seat belt emergency-locking retractor was developed in the early 1960s to help maintain occupant position during rapid deceleration. The locking sensitivity of the device has been an important issue given the need to assure that the retractor would lock very early during a collision and even during the application of emergency braking, but not be so sensitive as to cause "nuisance" locking during normal driving conditions. Based on the limited knowledge and technology at the time, the Society of Automotive Engineers (SAE) Motor Vehicle Seat Belt Committee (MVSBC) developed the recommended practice SAE J–4b, and subsequently SAE J–4c. These recommended practices provided performance requirements, laboratory test procedures, and minimal design requirements for seat belt assemblies for use in motor vehicles, in order to minimize the risk of bodily harm in an impact. However, the test methodologies for the emergency-locking retractor were not clearly defined in these SAE recommended practices. SAE J–4c was ultimately adopted by NHTSA in the promulgation of Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat belt assemblies.* As a result, the test methodology, instrumentation, and measurements for assessing conformance were not explicitly described in S4.3(j) and S5.2(j) of FMVSS No. 209. This situation has not changed since the adoption of the standard on February 3, 1967.

Based on FMVSS No. 209, the agency developed a laboratory test procedure for its compliance laboratories to follow, which provided more detail concerning the test set up. The most recent version,

TP–209–05, was issued on January 17, 2003. To ensure that the retractor will be subject to at least 0.7 g in testing, as required by the standard, the test procedure specifies the use of a 0.72 g acceleration pulse. This test pulse accounts for calibration and accuracy ranges of the test equipment.

The Automotive Occupant Restraints Council (AORC) requested an interpretation of S4.3(j) and S5.2(j) to gain a better understanding of the seat belt emergency-locking retractor test procedures and performance requirements. NHTSA responded through an interpretation letter dated February 4, 2000. The AORC did not agree with the position expressed in the interpretation letter and subsequently submitted a petition for rulemaking on June 2, 2000.

The AORC petition requested that NHTSA amend sections S4.3(j) and 5.2(j) of FMVSS No. 209 with respect to the acceleration pulse shape, onset rate,[1] time duration, and acceleration tolerance. (Docket Number NHTSA–2127–2000–7073–12.) In addition, the AORC requested that NHTSA apply to S4.3(j) and S5.2(j) the same instrumentation specifications used in other FMVSS dynamic performance requirements.

The AORC indicated that at the time FMVSS No. 209 was developed, both the SAE Committee and NHTSA were working on emergency-locking retractors. Due to limitations of test equipment at that time, the SAE Committee specified that the 0.7 g acceleration be achieved within a time window of 50 milliseconds (ms), but declined to include an onset rate specification. The AORC believes that the intent of both the SAE Committee and NHTSA, at the time when FMVSS No. 209 was adopted, was to mimic a hard braking deceleration pulse in which the 0.7 g level should be achieved with a sharp onset rate, followed by a steady-state deceleration. However, neither the SAE Committee nor NHTSA addressed the onset rate range and the deceleration tolerance at that time, and neither organization has addressed the requirements for emergency-locking retractors since then.

In response to the AORC's request for an interpretation, the agency stated in the February 4, 2000 letter:

> Nothing in the standard purports to require a constant acceleration (or a constant rate of increase of acceleration), to establish a specific period during which the acceleration must be maintained, or to prohibit any "decay" after the 0.7 g level is reached. Therefore, each retractor must be able to meet the locking requirements of the standard regardless of the rate of acceleration, the duration of the acceleration, or the extent of any subsequent "decay."

The AORC agreed that sections S4.3(j) and S5.2(j) do not explicitly address the technical points of the testing methodology. In its petition for rulemaking, the AORC argued that many acceleration pulses conform to S4.3(j) and S5.2(j) in theory, but those pulses would cause "currently-considered FMVSS No. 209 compliant retractors" to fail the locking requirements within the 25 millimeter (mm) webbing payout. Further, AORC believes that NHTSA's interpretation permits testing methodologies that virtually no known emergency-locking retractor could possibly meet. In its petition, the AORC provided several example pulses that would conform to the criteria in the interpretation letter, but would not be sufficient to consistently lock a production retractor.

To address these concerns, the AORC petitioned that S5.2(j) should include a specific acceleration-time (a-t) corridor, with the maximum and minimum acceleration onset rates matching those specified in the Economic Commission for Europe Regulation No. 16, *Uniform Provisions Concerning the Approval of: Safety Belts and Restraint Systems for Occupants of Power-Driven Vehicles and Vehicles Equipped with Safety Belts* (ECE R16). The AORC also stated that the acceleration and the webbing displacement recording techniques should conform to SAE Recommended Practice J211/1 rev. Mar 95, "Instrumentation for Impact Test-Part 1—Electronic Instrumentation," (SAE J211/1 rev. Mar 95), the signals should be filtered with an SAE Class 60 filter, and the accelerometer should be an instrumentation grade, high accuracy, 10 g device. The petition contended that the addition of an a-t corridor and the specification of the test methodology and instrumentation would create the needed objectivity in the standard and fully clarify the standard in this area.

II. Performance Requirements

Currently, there are two types of emergency-locking retractors in production. There are those that are sensitive to webbing withdrawal rate and those sensitive to vehicle deceleration. The latter type of retractor responds directly to the 0.7 g acceleration pulse and lock-up usually occurs within a short period of time. The former type of retractor responds to the webbing withdrawal speed, which slowly builds up from zero to the threshold speed, when the assembly is subjected to the 0.7 g acceleration pulse. As a result, a longer time period may be required for this type of retractor to respond. Despite the two different basic designs, FMVSS No. 209 has only one requirement for compliance testing.

Under S4.3(j)(1) of FMVSS No. 209, an emergency-locking retractor of a Type 1 or Type 2 seat belt assembly,[2] when tested in accordance with S5.2(j), "shall lock before the webbing extends 25 mm when the retractor is subject to an acceleration of 7 m/s^2 (0.7 g)." S5.2(j) states in part that "[t]he retractor shall be subject to an acceleration of 7 m/s^2 (0.7g) within a period of 50 milliseconds (ms), while the webbing is at 75 percent extension[.]"

The AORC asserts that these sections do not provide sufficient detail for certain allegedly essential elements necessary for conducting compliance tests. In its petition, the AORC stated that S4.3(j) and S5.2(j) do not specify: (A) A rate of onset, (B) an acceleration pulse duration, (C) an acceleration tolerance level, and (D) a subsequent acceleration decay.[3] In response to the AORC's concerns, we are proposing to amend those paragraphs of the standard.

A. Rate of Onset

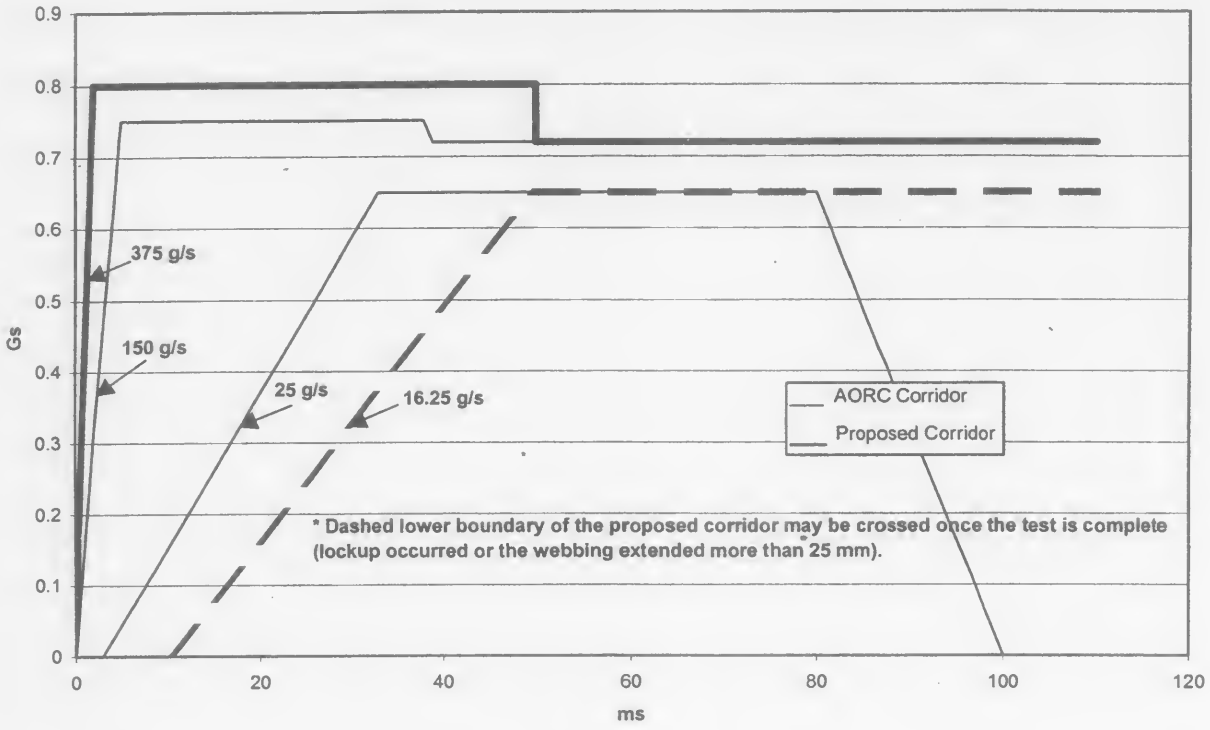
The agency is proposing a new acceleration corridor with an increased maximum onset rate and a wider acceleration corridor, which would allow a range of onset rates to be tested that we have preliminarily determined to be more representative of real world crashes and emergency braking events. If made final, these amendments would establish a maximum onset rate of 375 g/sec. (See Figure A.) We are also proposing a wider onset corridor to provide the opportunity for conducting compliance tests with simulated emergency braking pulses, or those pulses that have a half-bell shaped onset curve. This document also proposes a 16.25 g/sec minimum onset rate to accommodate purely linear pulses during the first 50 ms interval.

[1] Onset rate is defined as the rate (in g/sec) at which the seat belt retractor is initially accelerated from time zero.

[2] Under S3 of FMVSS No. 209, a Type 1 seat belt assembly is a lap belt for pelvic restraint, and a Type 2 seat belt assembly is a combination of pelvic and upper torso restraints.

[3] Acceleration decay is defined as the rate (in g/sec) at which the retractor acceleration is returned to zero.

Figure A: Comparison of NHTSA and AORC-proposed acceleration corridors.



In developing this proposal, the agency examined vehicle crash tests, hard braking tests, FMVSS No. 209 compliance test pulses,[4] and data presented by the AORC in its petition for rulemaking.[5] We found that the onset rate for various crash test pulses varied greatly, from over 1,000 g/sec for crash pulses to 2 g/sec for emergency braking pulses. We determined that there are three basic onset pulse shapes used in compliance testing—(1) linear (Dayton T. Brown and Pacific Scientific Co.), (2) quarter-sine wave (Pacific Scientific Co.), and (3) half-bell shaped (U.S. Testing). While the linear type has a well-defined rate of onset, the remaining two do not.

To accommodate the range of onset rates, the agency is proposing to amend the time window within which the 0.7 g acceleration must be obtained. The proposed maximum onset rate of 375 g/sec would allow pulses that have historically been used for ensuring a minimum level of safety performance for the emergency-locking retractor in vehicle seat belts along with a wide range of acceleration pulses. The proposal expands the 150 g/sec maximum onset recommended by the AORC to include the acceleration pulses used for compliance testing by Dayton T. Brown and U.S. Testing. (See Figure B.) To exclude these pulses could potentially degrade the requirements of the standard. AORC did not provide any data to substantiate its assertion that its proposed onset rates were more appropriate. It merely noted that the onset rates matched closely to those specified in the ECE R16 (25 g/sec to 125 g/sec).

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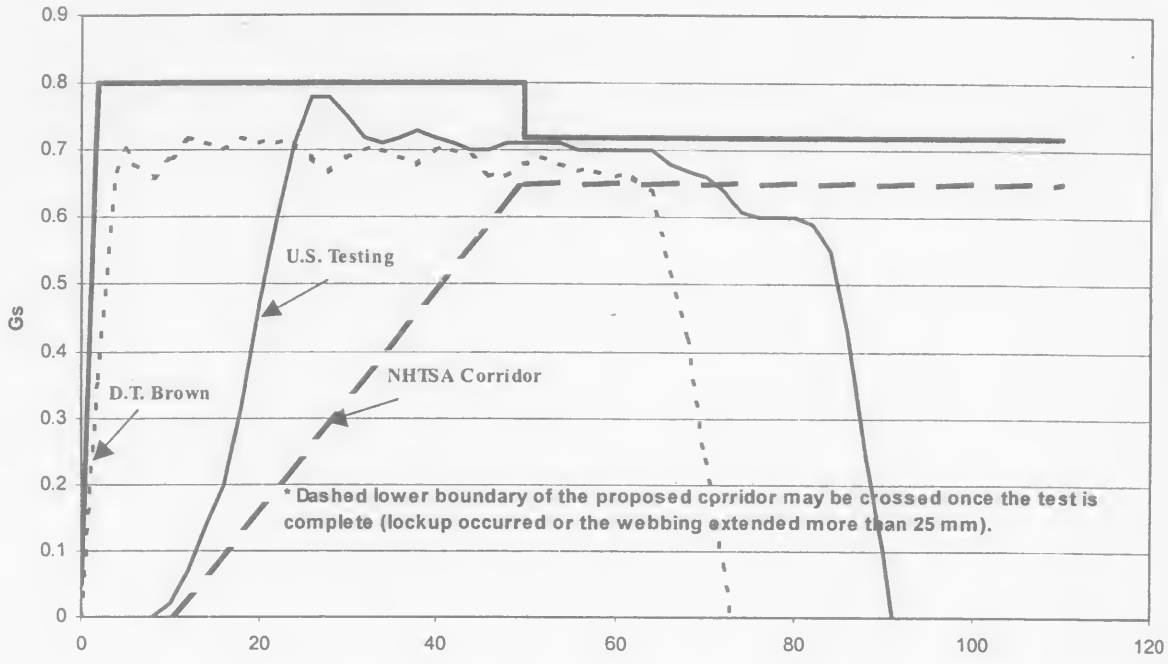
[4] From U.S. Testing and Dayton T. Brown test laboratories.

[5] From Pacific Scientific Company.

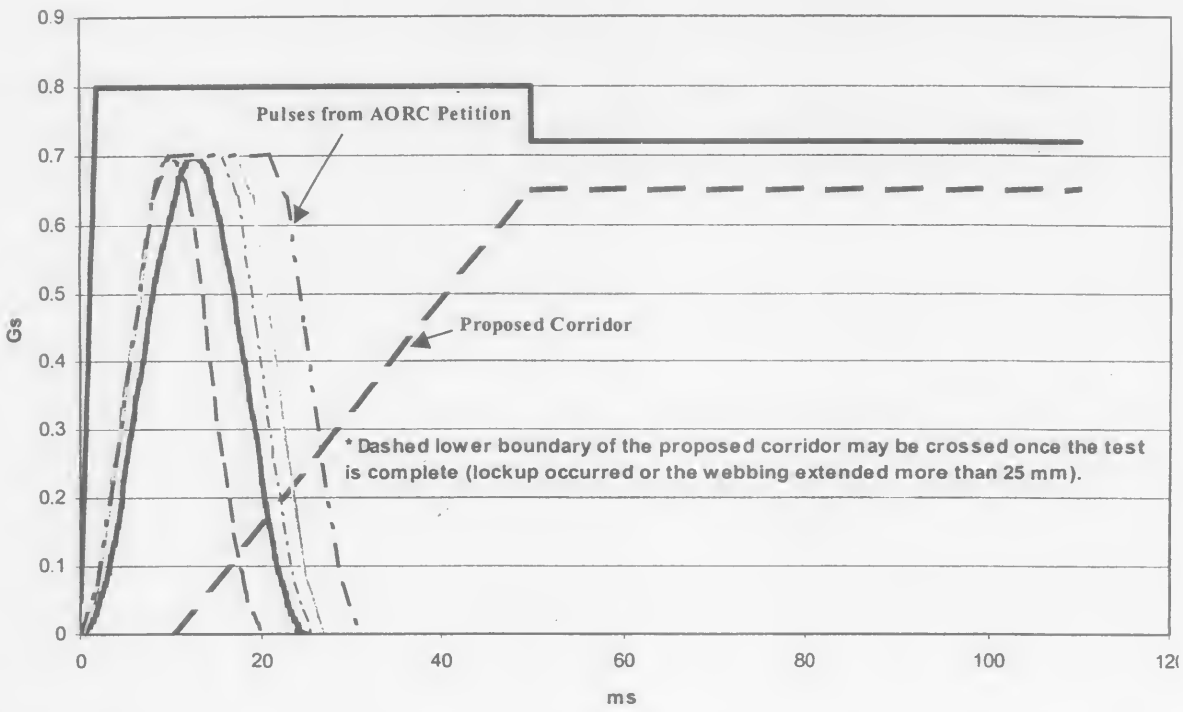
Figure B: Comparison of Rulemaking Corridor and Test Pulses from U.S. Testing and Dayton T. Brown.



The proposed onset corridor and 16.25 g/sec minimum onset rate would allow for pulses with slower onset rates and require compliance under the acceleration pulses currently used for FMVSS No. 209 compliance testing by U.S. Testing. The acceleration pulses currently used for FMVSS No. 209 have proven to be repeatable and reproducible. Specifying a corridor that includes the current acceleration pulses used for compliance testing demonstrates that it is possible to conduct a repeatable and reproducible acceleration pulse within the proposed corridor. While the AORC suggested a corridor more narrowly defined at the beginning (*i.e.*, a 0–4 ms window), it did not provide a rationale for that limitation.

Lastly, the proposed corridor addresses the AORC's concern of needing to certify to theoretical acceleration pulses that meet the letter of the current FMVSS No. 209 regulation, but may not exist in real world crash or emergency braking events. Figure C provides a plot demonstrating that the theoretical pulses and mathematical models provided by the AORC in its petition would be eliminated by the onset rate corridor proposed by this document. The revised onset rate corridor for the acceleration pulse in the proposal would maintain the integrity of the current FMVSS No. 209 standard.

Figure C: Comparison of the Proposed Corridor and Example Pulses from AORC Petition



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B. Acceleration Pulse Duration

The proposal in this document would not require the test pulse to have a minimum time duration, as suggested in AORC's petition. The 50 ms time period specified in S5.2(j) implicitly specifies an onset rate and not the time duration of the acceleration pulse. Since S4.3(j) and S5.2(j) do not provide a specific acceleration time duration, the AORC recommended that a retractor a-t corridor be included in S5.2(j). (See Docket Number NHTSA–2000–7073–12.)

The lower bound of the corridor proposed by the AORC has a minimum time limit of 100 ms while the upper bound has no time limit. In theory, the AORC is suggesting that the minimum time duration for the 0.7 g pulse should be 100 ms. However, the suggested a-t corridor presents some problems. For example, the minimum 100 ms time duration does not work for an acceleration pulse that coincides with the suggested upper a-t corridor, since it will produce a 25 mm webbing payout in about 86 ms. (This time estimate was made by double integrating the upper corridor of the a-t pulse.) We also note that the two compliance test pulses used by U.S. Testing and Dayton T. Brown laboratories would be disqualified by the AORC corridor since their duration is less than 100 ms. In these tests a lock-up occurs 10 ms to 15 ms before the acceleration drops to zero.

Once the onset rate of the acceleration pulse is given, the pulse duration that is required to produce 25 mm webbing payout is implicitly determined. Therefore, a pulse time duration specification is not essential.

C. Acceleration Tolerance Level

In order to preserve test pulses that simulate the worst case test condition, we decided against proposing an a-t corridor that defines the permissible a-t curves with which to demonstrate performance. Some laboratory hard (emergency) braking tests show a peak in the acceleration before acceleration achieves a "steady-state" condition. In some instances, the initial peak pulse may exhibit several rapid oscillations before it converges to the 0.7 g acceleration. NHTSA's field braking test data (see the agency's document in this docket) show that the vehicle deceleration reaches its threshold value of 0.7 g at about 0.5 seconds and lasts for a few seconds, depending upon the vehicle travel velocity. The deceleration reaches its initial peak and then drops off, or perhaps even increases, slightly before it achieves the so-called "steady-state condition."

The upper bound of the first 48 ms corridor (between 2 ms and 50 ms) proposed in this document is 0.8 g to allow the initial peak to exceed 0.7 g prior to reaching a steady state response. Test laboratories often overshoot or undershoot the 0.7 g level at the beginning of the pulse for a short period of time. We have examined various compliance test pulses and found that many of them have an initial peak that is slightly higher than 0.7 g. For instance, the pulse used by U.S. Testing (see Figure B) shows that the acceleration starts at 9 ms to 10 ms, peaks at 0.75 g to 0.78 g around 26 ms, and then returns to the 0.7 g to 0.72 g range around 32 ms. The acceleration remains at approximately this range until the retractor locks. While the test pulse used by U.S. Testing shows a smooth, uni-modal initial peak pulse, this may not always be the case. An initial peak pulse may exhibit several rapid oscillations before it converges to the 0.7 g acceleration.

Based on the current compliance test data, the agency has tentatively concluded that an initial peak above 0.7 g should be allowed within the first 50

ms time period. While the a-t corridor proposed by the AORC would allow an initial peak of up to 0.75 g, it would exclude some of the test pulses used by U.S. Testing. If made final, the corridor proposed in this document would have an upper bound of 0.8 g from 2 ms to 50 ms to allow the initial peak to exceed 0.7 g prior to reaching a steady state response. This would reflect the agency's intent that the test pulse should simulate the worst case test condition, similar to those observed in laboratory hard (emergency) braking tests. For the remainder of the a-t corridor (from 50 ms of the lower corridor and upper corridor to the end of the test), the a-t corridor would be specified at 0.7 g with a +0.02/−0.05 g tolerance boundary.

D. Subsequent Acceleration Decay

We are not proposing to include a specification for acceleration decay (pulse shape and duration) as requested by the AORC. FMVSS No. 209 specifies that the emergency-locking retractor shall lock within the 25 mm webbing payout and that the acceleration shall reach 0.7 g within 50 ms, but does not address acceleration decay (time and rate of decrease from 0.7 g). The AORC requested that NHTSA amend the standard to include a specification for acceleration decay, but did not provide sufficient data demonstrating that such a specification is appropriate. It appears that the AORC is concerned about rapid acceleration decay after the initial peak.

The AORC presented several theoretical analyses in support of its argument for a specified acceleration decay. One analysis showed that allowing an early acceleration decay far below the 0.7 g level is problematic to the webbing payout specification because it could cause a currently FMVSS No. 209 compliant retractor to not lock up during the test.

While we acknowledge the difficulty of early decay, the AORC's concern has been addressed through this proposal. The lower boundary of the proposed corridor, as shown in Figure C, would prevent the use of acceleration pulses that have an early, rapid acceleration decay. After either a lock-up occurs or the webbing payout reaches 25 mm, the test is officially over. The acceleration pulse after this point does not affect the test results and is no longer a concern to test accuracy. Based on the above reasons, we conclude that a specification for acceleration decay is not required.

III. Test Procedures and Measurement Specification

In agreement with the AORC petition, we are proposing that the acceleration specifications under FMVSS No. 209 be recorded and processed according to the practices specified in the SAE J211/1 rev. Mar 95. If these proposals are made final, the instrumentation used to record the a-t history and the webbing payout would be in conformance with the instrumentation requirements of SAE J211/1 rev. Mar 95, the electronic signals would be filtered with an SAE Class 60 filter, and the accelerometer used for retractor testing would be an instrumentation grade, high accuracy, 10 g device. While SAE J211/1 rev. Mar 95 does not specify a measurement requirement for webbing payout, this proposal would require seat belt webbing payout be filtered with an SAE Class 60 filter, as is required under SAE J211/1 rev. Mar 95 for seat belt forces. If made final, the proposal would employ the same instrumentation requirements currently specified in other dynamic performance Federal motor vehicle safety standards.

The proposed test procedure would also specify use of a displacement transducer to measure webbing displacement. A displacement transducer would record a direct measurement of webbing displacement and eliminate uncertainty that is inherent in indirect measurement techniques, such as applying a numerical integration to accelerometer data.

We are also proposing a tolerance for the angles specified in the test procedures. If made final, the standard would permit a tolerance of plus or minus 3 degrees for all angles and orientations of the seat belt assemblies and component, unless otherwise specified.

IV. "Nuisance" Locking

FMVSS No. 209 establishes a sensitivity threshold for emergency-locking retractors to prevent "nuisance" locking during normal driving conditions. Under S4.3(j)(2), an emergency-locking retractor sensitive to vehicle deceleration must not lock up when the retractor is rotated in any direction to any angle 15 degrees or less. Under S4.3(j)(3), an emergency-locking retractor sensitive to webbing withdrawal must not lock up before the webbing extends 51 mm when the retractor is subject to an acceleration of 0.3 g or less.

The test procedure for determining compliance with the sensitivity threshold for an emergency-locking retractor sensitive to webbing withdrawal is similar to the test procedure for determining compliance with the 0.7 g lock-up requirement. As such, this document is also proposing to require that retractors sensitive to webbing withdrawal be subjected to an acceleration of 0.3 g occurring within a period of the first 50 ms and sustaining an acceleration no greater than 0.3 g throughout the test, while the webbing is at 75 percent extension, to determine compliance with S4.3(j)(2). We are not proposing a corridor for the 0.3 g acceleration because the current specification is valid and the AORC did not petition us to amend it.

V. Regulatory Text

The proposed amendment would revise the format of the regulatory text. Under the proposal, all of the emergency-locking retractor requirements would be placed in S4.2(j). The proposed format would clarify the requirements and test procedures applicable to retractors sensitive to vehicle acceleration and retractors sensitive to webbing withdrawal.

VI. Costs and Benefits

NHTSA did not estimate benefits for this rulemaking since it is anticipated that there would not be substantial changes in the performance of emergency-locking retractors. The proposed amendments more directly affect the test procedure specifications and are intended only to clarify the test specifications.

NHTSA anticipates only a minimal cost burden to vehicle manufacturers from this proposal. The testing laboratories might have to develop new specifications for the instrumentation used to generate the acceleration pulses and may be required to obtain the specified accelerometer. However, NHTSA anticipates that only a small number of businesses would need to purchase new equipment since the specifications were requested by the AORC in its petition. The members of the AORC constitute the majority of seat belt suppliers in the U.S. Those who would have to purchase new equipment could do so for a one time minimal cost to the test laboratory. Further, it is anticipated that all current emergency-locking retractors would continue to comply with FMVSS No. 209 without change under the proposed amendments.

VII. Lead-Time

If made final, the proposed amendments would have a one-year lead-time. The major seat belt manufacturers in the United States,

through the AORC, initiated the petition associated with this rulemaking, so we do not anticipate any regulated parties having difficulties in complying. Although seat belt assemblies currently meet the proposals, the one-year lead-time would provide compliance laboratories time to reconfigure their acceleration pulses to meet the proposed corridors.

VIII. Request for Comments on Specific Issues

In addition to the matters discussed above, we are seeking responses to the following questions:

1. The AORC suggested a corridor more narrowly defined at the beginning (*i.e.*, a 0–4 ms window). Would a narrower corridor as suggested by the AORC be feasible? Would a narrower corridor more accurately specify the a-t onset?

2. Would any currently compliant emergency-locking retractor be unable to comply under the proposed corridor?

3. Is 50 ms at the beginning of the time period sufficient to allow for an initial peak above 0.7g limit?

4. ELR lock-up occurs when rotation of the ELR gear assembly stops. The methods employed by test laboratories to determine ELR lock-up are indirect methods rather than direct measurement of the ELR gear. In general, an ELR lock-up occurrence is determined by the observation of a sudden change in sled acceleration-time curve. Thus, the exact time of lock-up is subject to test laboratory's interpretation of this event. We are requesting input on methods that can be employed in our test procedures to accurately determine when ELR lock-up occurs. Your response should include the following:

a. The type of sensing device and/or test equipment to be employed for detecting lock-up.

b. Any procedures for performing a lock-up test. Please provide technical support.

c. Any criteria used to evaluate the lock-up condition. Please provide technical support.

IX. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (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 above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[6]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html*. DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf*.

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 will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), 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 above under **ADDRESSES.** The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "Simple Search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "Search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

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.

[6] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

X. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budget impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). As stated above in the Costs and Benefits section, this proposal would not require substantial changes in performance of emergency-locking retractors. Testing laboratories might need to develop new specifications for the instrumentation used to generate the acceleration pulses, but this is not expected to be more than a minimal cost burden for manufacturers.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this proposed action on small entities. I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). If adopted, the proposal would directly affect motor vehicle manufacturers, manufacturers of seat belt assemblies, and test laboratories. North American Industry Classification System (NAICS) code numbers 336111, *Automobile Manufacturing,* and 336112, *Light Truck and Utility Vehicle Manufacturing,* prescribe a small business size standard of 1,000 or fewer employees. A majority of vehicle manufacturers would not qualify as a small business. NAICS code No. 336399, *All Other Motor Vehicle Parts Manufacturing,* prescribes a small business size standard of 750 or fewer employees.

This proposal is in response to a petition from the AORC, which represents U.S. manufacturers of seat belt assemblies. The agency does not anticipate manufacturers of seat belt assemblies having any difficulty in complying with the proposal. The proposal, if made final, might make it necessary for testing laboratories to develop new specifications for the instrumentation used to generate and record the acceleration pulses. This would result in only a minimal burden to seat belt and vehicle manufacturers. Since test laboratories already have instrumentation necessary to record the a-t response for compliance testing, we estimate that the maximum, one-time cost to laboratories would be less than $500. This cost would be for the purchase of an instrument grade, high accuracy 10 g accelerometer.

C. Executive Order No. 13132

NHTSA has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism, and has determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

D. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

E. Paperwork Reduction Act

This proposed rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The amendments that NHTSA is proposing in this document incorporate voluntary consensus standards adopted by the Society of Automotive Engineers. Accordingly, this proposed rule is in compliance with Section 12(d) of NTTAA.

G. Civil Justice Reform

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This rulemaking would not result in expenditures by State, local or tribal governments, in the aggregate, or by the

private sector in excess of $100 million annually.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health, or safety risks that disproportionately affect children.

J. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If made final, this rulemaking would amend the acceptable pulse corridor for demonstrating compliance with the seat belt emergency-locking retractor specifications. This proposal would also incorporate SAE measurement procedures. Therefore this proposal was not analyzed under E.O. 13211.

K. Data Quality Act

Section 515 of the Fiscal Year (FY) 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, § 515, codified at 44 U.S.C. § 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model. OMB issued final guidelines implementing the Data Quality Act (67 FR 8452, Feb. 22, 2002). On October 1, 2002, the Department of Transportation promulgated its own final information quality guidelines that take into account the unique programs and information products of DOT agencies (67 FR 61719). The DOT guidelines were reviewed and approved by OMB prior to promulgation. NHTSA made information quality a primary focus well before passage of the Data Quality Act, and has made implementation of the new law a priority. NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines, and plans to review and update these procedures on an ongoing basis.

NHTSA believes that the information and data used to support this rulemaking adhere to the intent of the Data Quality Act and comply with both the OMB and DOT guidelines. NHTSA has reviewed all relevant procedures for research and analysis in order to ensure that information disseminated by the agency is accurate, reliable, and unbiased in substance, and is presented in a clear, complete, and unbiased manner. Having followed those procedures, NHTSA believes that the information related to this rulemaking meets the requirements of the Data Quality Act guidelines of both OMB and DOT. This expectation regarding information quality has been confirmed by the agency in the course of its pre-dissemination review, per the guidelines.

Individuals may review all of the data related to this rulemaking by accessing the DOT docket management Web site at *http://dms.dot.gov* and using the docket number of this notice. See Section N. of this notice for further instructions.

L. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

M. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

N. 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.209 is amended by:

a. Revising S4.1(a) and (b), S4.3(j) and S5.2(j);

b. Adding S5.4; and

c. Adding Figure 8 after Figure 7 of § 571.209.

The revised and added sections read as follows.

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

S4 *Requirements.*

S4.1 (a) *Incorporation by reference.* SAE Recommended Practice J211/1 rev. March 1995, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation," is incorporated by reference in S5.2(j) and is hereby made part of this Standard. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1

CFR part 51. Copies of SAE Recommended Practice J211/1 rev. March 1995, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation" are available from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. You may inspect a copy at NHTSA's Technical Reference Library, 400 Seventh Street, SW., room 5109, Washington, DC, or at the or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *Single occupancy.* A seat belt assembly shall be designed for use by one, and only one, person at any one time.

* * * * *

S4.3 *Requirements for hardware.*

* * * * *

(j) *Emergency-locking retractor.* An emergency-locking retractor of a Type 1 or Type 2 seat belt assembly, when tested in accordance with the procedures specified in paragraph S5.2(j)—

(1) Shall under zero acceleration loading—

(i) Exert a retractive force of not less than 1 N and not more than 7 N when attached to a strap or webbing that restrains both the upper torso and the pelvis;

(ii) Exert a retractive force not less than 3 N when attached only to the pelvic restraint; and

(iii) Exert a retractive force of not less than 1 N and not more than 5 N when attached only to an upper torso restraint.

(iv) For a retractor sensitive to vehicle acceleration, lock when tilted at any angle greater than 45 degrees from the angle at which it is installed in the vehicle or meet the requirements of S4.3(j)(2).

(v) For a retractor sensitive to vehicle acceleration, not lock when the retractor is rotated in any direction to any angle of 15 degrees or less from its orientation in the vehicle.

(2) Shall lock before the webbing payout exceeds the maximum limit of 25 mm after the retractor is subjected to an acceleration of 0.7 g under the applicable test conditions of S5.2(j)(3)(i) or (ii).

(3) For a retractor sensitive to webbing withdrawal, shall not lock before the webbing payout extends to the minimum limit of 51 mm when the retractor is subjected to an acceleration no greater than 0.3 g under the test condition of S5.2(j)(3)(iii).

* * * * *

S5.2 *Hardware.*

* * * * *

(j) Emergency-locking retractor. A retractor shall be tested in a manner that permits the retraction force to be determined exclusive of the gravitational forces on hardware or webbing being retracted.

(1) Retraction force: The webbing shall be extended fully from the retractor, passing over and through any hardware or other material specified in the installation instructions. While the webbing is being retracted, measure the lowest force of retraction within plus or minus 51 mm of 75 percent extension.

(2) Gravitational locking: For a retractor sensitive to vehicle acceleration, rotate the retractor in any direction to an angle greater than 45 degrees from the angle at which it is installed in the vehicle. Apply a force to the webbing greater than the minimum force measured in S5.2(j)(1) to determine compliance with S4.3(j)(1)(iv).

(3) Dynamic tests: Each acceleration pulse shall be recorded using an accelerometer having a full scale range of plus and minus 10 g and processed according to the practice set forth in SAE Recommended Practice J211/1 rev. March 1995, "Instrumentation for Impact Test—Part 1 —Electronic Instrumentation," Channel Frequency Class 60. The webbing shall be positioned at 75 percent extension and the displacement shall be measured using a displacement transducer. The displacement data shall be processed at Channel Frequency Class 60. For tests specified in S5.2(j)(3)(i) and (ii), the 0.7 g acceleration pulse shall be within the acceleration-time corridor shown in Figure 8 of this standard.

(i) For a retractor sensitive to vehicle acceleration—

(A) The retractor drum's central axis shall be oriented at the angle at which it is installed in the vehicle. Accelerate the retractor in the horizontal plane in two directions normal to each other and measure webbing payout; and

(B) If the retractor does not meet S4.3(j)(1)(iv), accelerate the retractor in three directions normal to each other while the retractor drum's central axis is oriented at angles of 45, 90, 135 and 180 degrees from the angle at which it is installed in the vehicle and measure webbing payout

(ii) For a retractor sensitive to webbing withdrawal—

(A) The retractor drum's central axis shall be oriented horizontally. Accelerate the retractor in the direction of webbing retraction and measure webbing payout; and

(B) The retractor drum's central axis shall be oriented at angles of 45, 90, 135, and 180 degrees to the horizontal plane. Accelerate the retractor in the direction of webbing retraction and measure the webbing payout.

(iii) A retractor that is sensitive to webbing withdrawal shall be subjected to an acceleration no greater than 0.3 g occurring within a period of the first 50 ms and sustaining an acceleration no greater than 0.3 g throughout the test, while the webbing is at 75 percent extension. Measure the webbing payout.

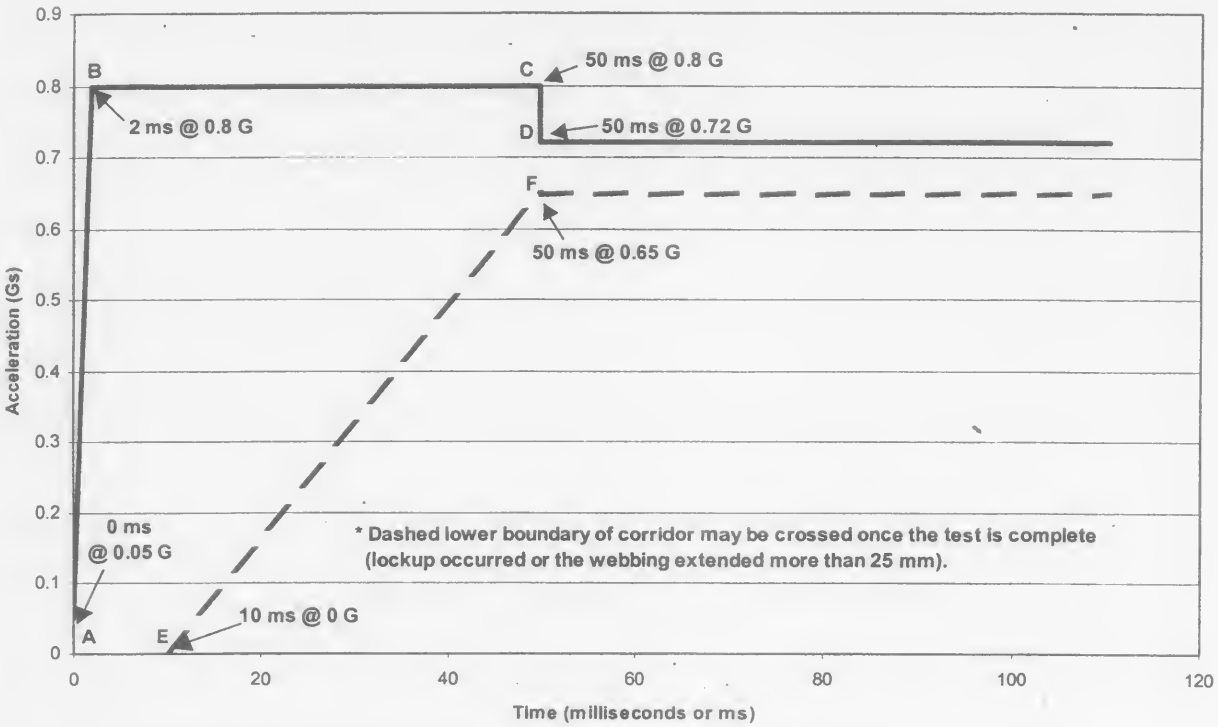
* * * * *

S5.4 Tolerance on angles. Unless a range of angles is specified, all angles and orientations of seat belt assemblies and components specified in this standard shall have a tolerance of plus or minus 3 degrees.

* * * * *

BILLING CODE 4910–59–P

Figure 8: Acceleration corridors



The time zero for the test is defined by the point when the acceleration achieves 0.05 g.

Reference Point	Time (ms)	Acceleration (g)
A	0	0.05
B	2	0.8
C	50	0.8
D	50	0.72
E	10	0
F	50	0.65

* * * * *

Issued on May 26, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–12410 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–59–C

Notices

Federal Register
Vol. 69, No. 107
Thursday, June 3, 2004

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–018N]

Workshops

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a series of workshops from May through September, 2004, to discuss Revision 1 of Directive 10,010.1, "Microbiological Testing Program and Other Verification Activities for *Escherichia coli* O157:H7 (*E. coli* O157:H7) in Raw Ground Beef Products and Raw Ground Beef Components and Beef Patty Components." This directive provides FSIS inspection personnel with instructions for sampling raw beef products as part of verification testing for *E. coli* O157:H7. It also outlines actions FSIS will take when a raw ground beef product sample is found to be positive for *E. coli* O157:H7. Directive 5000.2, "Review of Establishment Data by Inspection Program Personnel" and Directive 6420.2, "Verification of Procedures for Controlling Fecal Material, Ingesta, and Milk in Slaughter Operations" will also be discussed. Directive 5000.2 states that FSIS will review plant food safety records at least once a week. Directive 6420.2 clarifies FSIS zero tolerance policies and verification methods. The meetings are targeted to small and very small plant owner/operators. The first meeting was held in Toledo, Ohio, on May 22, 2004. State inspection personnel and other industry representatives are encouraged to attend. Each meeting will include opportunities for the attendees to ask questions of FSIS representatives.

DATES: Further information on these workshops will be announced on the FSIS Web site, *http://www.fsis.usda.gov*, and through the Constituent Update; see *Additional Public Notification* below.

The upcoming workshops are:

- Los Angeles, California on June 5
- Miami, Florida on June 12
- San Antonio, Texas on June 19
- Boulder, Colorado on June 26
- New York, New York on July 10
- Sacramento, California on July 17
- St. Louis, Missouri on July 24
- Montgomery, Alabama on July 31
- Philadelphia, Pennsylvania on August 28
- Amarillo, Texas on September 11

ADDRESSES: Information on specific sites will be provided through the FSIS Web site and Constituent Update. FSIS highly recommends that attendees pre-register for the workshops. To pre-register for a workshop attendees can call toll free at 1–866–553–3052 or call 202–690–6520 or send an e-mail to *renee.ellis@fsis.usda.gov*.

A tentative agenda will be available in the FSIS Docket Room and on the Web site.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila Johnson of the FSIS Strategic Initiatives, Partnerships and Outreach Staff at (202) 690–6498. If a sign language interpreter or other special accommodation is required, please contact Ms. Johnson at least two days before the workshop.

For technical information, please contact Ms. Mary Cutshall, Director, Strategic Initiatives, Partnerships and Outreach Staff, Office of Public Affairs, Education and Outreach, at (202) 690–6520.

SUPPLEMENTARY INFORMATION:

Background

Non-intact raw beef products and intact raw beef products intended for processing into non-intact products that are contaminated with *E. coli* O157:H7 are adulterated. The revised Directive 10,010.1, which sets out the FSIS verification sampling program for *E.coli* O157:H7, focuses on raw ground beef products and the beef products that are used to produce raw ground beef products. The directive also discusses the significance of a finding that a sample is "presumptive positive" and the disposition of products that test positive for *E. coli* O157:H7.

Directive 6420.2 covers FSIS verification procedures for meat and poultry. Directive 5000.2 pertains to review of industry food safety records.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public, and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov*.

The notice will also be published at the Regulations.gov Web site, the central online rulemaking portal of the United States government. Regulations.gov is offered as a public service to increase participation in the Federal government's regulatory activities. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, farm and consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done at Washington, DC, on May 28, 2004.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 04–12581 Filed 6–2–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, Field Crop Production.

DATES: Comments on this notice must be received by August 9, 2004 to be assured of consideration.

ADDRESSES: Comments may be sent to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250 or to *gmcbride@nass.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Field Crop Production.

OMB Control Number: 0535–0002.

Expiration Date of Approval: 12/31/04.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production, prices, and disposition. The Field Crop Production program consists of probability field crop surveys and supplemental panel surveys. The panel surveys capture unique crop characteristics such as the concentration of crops in localized geographical areas. These surveys are extremely valuable for commodities where acreage and yield are published at the county level.

The Field Crop Production Program was last approved by OMB in 2001 for a 3-year period. NASS intends to request that the survey be approved for another 3 years. Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 550,000.

Estimated Total Annual Burden on Respondents: 150,000 hours.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

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 will have practical utility; (b) 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; (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 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. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, Room 5330B South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024 or *gmcbride@nass.usda.gov*.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, May 18, 2004.

Carol House,

Associate Administrator.

[FR Doc. 04–12468 Filed 6–2–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the Fruits, Nuts, and Specialty Crops Surveys.

DATES: Comments on this notice must be received by August 9, 2004 to be assured of consideration.

ADDRESSES: Comments may be sent to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or to *gmcbride@nass.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Fruits, Nuts, and Specialty Crops Surveys.

OMB Control Number: 0535–0039.

Expiration Date of Approval: 11/30/04.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production, prices, and disposition. The Fruits, Nuts, and Specialty Crops survey program collects information on acreage, yield, production, price, and value of citrus and noncitrus fruits and nuts and other specialty crops in States with significant commercial production. The program provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. Producers, processors, other industry representatives, State Departments of Agriculture and universities also use forecasts and estimates provided by these surveys.

The Fruits, Nuts, and Specialty Crops Program was last approved by OMB in 2001 for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 17 minutes per response.

Respondents: Producers, processors, and handlers.

Estimated Number of Respondents: 53,000.

Estimated Total Annual Burden on Respondents: 17,000 hours.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

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 will have practical utility; (b) 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; (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 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. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, Room 5330B South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024 or *gmcbride@nass.usda.gov*.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, May 18, 2004.

Carol House,

Associate Administrator.

[FR Doc. 04–12469 Filed 6–2–04; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Walnut Bayou Irrigation Project in the Red River Watershed, Little Rock, AR

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

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 Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, announces its intention to prepare an Environmental Impact Statement (EIS) to evaluate the impacts of an irrigation project in the Red River Watershed in Little River County, Arkansas.

The measures proposed by NRCS include the diversion of water from the Red River to irrigate 23,500 acres of agricultural land in the Walnut Bayou Irrigation District. The Draft EIS will assess the potential environmental and socioeconomic impacts of the NRCS proposed action and a range of alternatives. The Draft EIS analysis will incorporate mitigation measures which will minimize to the greatest extent practicable any potential adverse environmental or socioeconomic impacts.

Public Participation: The NRCS invites full participation to promote open communication and better decision making. All persons and organizations that have an interest in the Walnut Bayou Irrigation Project as it affects Little River County and the environment are urged to participate in the NEPA environmental analysis process.

Public comments are welcomed throughout the NEPA process. Opportunities for public participation include: (1) The EIS scoping period when comments on the NRCS proposal will be solicited through various media; (2) during the 45-day review and comment period for the published Draft EIS; and (3) for 30 days after the publication of the Final EIS.

Scoping Process: NRCS is soliciting public comments indicating what issues and impacts the public believes should be encompassed within the scope of the EIS analysis, any concerns they might have about the NRCS proposal and alternatives, and any ideas they might have about addressing irrigation for the Walnut Bayou Irrigation District.

FOR FURTHER INFORMATION CONTACT: Alan Rees, Biologist, Natural Resources Conservation Service, Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201–3225. Comments may also be submitted by sending a facsimile to (501) 301–3189, or by e-mail to *alan.rees@ar.usda.gov*. Respondents should provide mailing address information and indicate if they wish to be included on the EIS mailing list. All individuals on the mailing list will receive a copy of the Draft EIS.

Responsible Official: The State Conservationist, NRCS, Little Rock, Arkansas is the responsible official for this proposed action.

Decisions To Be Made: The responsible NRCS official will decide whether to approve the proposal, an alternative to the proposal, or no action.

Need for the Proposal: The proposal is needed to provide a dependable supply of irrigation water to cropland during the growing season.

Purpose of the Proposal: The purpose of the proposal is prevention of crop damage due to a lack of water for the existing crop composition.

SUPPLEMENTARY INFORMATION: The Walnut Bayou project area encompasses approximately 23,500 acres in Little River County in Southwest Arkansas. The project area begins at the Arkansas/Oklahoma state line and continues east along Walnut Bayou to its confluence with the Red River. The Red River is the largest source of surface water in the project area, and has about 48,000 square miles of drainage upstream from Arkansas. Corn, soybeans, pecans, grain sorghum, rice, and wheat are the primary crops produced within the project area.

Preliminary Issues: Among the issues that NRCS plans to consider in the scope of the EIS analysis are:

- The potential impacts on endangered species;
- The potential for soil salinization;
- The economic and social impacts of the proposed action and alternatives;
- The potential for floodplain impacts;
- The costs and benefits of the proposed action and alternatives; and
- Analysis of known and foreseeable cumulative effects on the Red River.

Preliminary Alternatives: The Draft EIS will assess the potential environmental impacts of a range of alternatives. The preliminary alternatives for the Draft EIS include: (1) On-farm irrigation water storage with no withdrawal from the Red River; (2) on-farm irrigation water storage with additional water withdrawn from the Red River; (3) on-farm conservation measures, no irrigation water storage, with water withdrawn from the Red River; and (4) no action. The alternatives will be refined and supplemented, as appropriate, based on input by the public and agencies during the public scoping process.

Alternative 1—On-farm irrigation water storage with no withdrawal from the Red River. Under this alternative runoff from rainfall that falls upon the project area would be captured, stored in reservoirs, and used for irrigation.

Other on-farm water conservation practices such as tailwater recovery pits and pipelines would also be installed as appropriate, according to individual farm irrigation water management plans. No water would be used from the Red River and there would be no district water distribution system.

Alternative 2—On-farm irrigation water storage with additional water withdrawn from the Red River. Under this alternative runoff from rainfall that falls upon the project area would be captured, stored in reservoirs, and used for irrigation. Other on-farm water conservation practices such as tailwater recovery pits and pipelines would also be installed as appropriate, according to individual farm irrigation water management plans. Water, as permitted by the Arkansas Soil and Water Conservation Commission, would be withdrawn from the Red River and distributed to farms in the project area utilizing canals, pipelines, and some natural channels.

Alternative 3—On-farm conservation measures, no irrigation water storage, water withdrawn from the Red River. Under this alternative on-farm water conservation practices such as tailwater recovery pits and pipelines would also be installed as appropriate, according to individual farm irrigation water management plans. Water, as permitted by the Arkansas Soil and Water Conservation Commission, would be withdrawn from the Red River and distributed to farms in the project area by utilizing canals, pipelines, and some natural channels.

Alternative 4—No Action. Federal agencies are required to evaluate the impacts of a No Action alternative when preparing an EIS, even though the alternative would not meet the agency's purpose and need.

Permits or Licenses Required: This proposal is being planned under a Congressional earmark. A nonriparian use permit from the Arkansas Soil and Water Conservation Commission would be required to withdraw water from the Red River for nonriparian users. A permit would be required from the U.S. Army Corps of Engineers under the Clean Water Act (CWA), section 404 for any project that would impede the flow of waters of the U.S. or that would affect any wetlands. A FEMA floodplain permit from effected National Flood Insurance Program Communities may be needed if flood waters of a one hundred year flood are altered. Approval from the State Historic Preservation Office would be required if any National Register-eligible historic properties would be effected. Consultation with the U.S. Fish and Wildlife Service would be required if the proposal may effect any species listed as threatened or endangered under the Endangered Species Act.

Estimated Dates for Draft EIS and Final EIS: NRCS expects to file the Draft EIS with the Environmental Protection Agency (EPA) and to have it available for public review and comment by July 30, 2004. At that time, the EPA will publish a Notice of Availability (NOA) of the Draft EIS in the **Federal Register**. The public comment period on the Draft EIS will be a minimum of 45 days from the date the EPA published the NOA.

After the comment period ends on the Draft EIS, the comments will be analyzed, considered, and responded to by NRCS in preparing the Final EIS. The Final EIS is scheduled for completion by October, 2004. The responsible officials will consider the comments, responses, and environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action. The responsible officials will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal in accordance with 36 CRF part 215.

Dated: May 20, 2004.

Kalven L. Trice,

State Conservationist.

[FR Doc. 04–12580 Filed 6–2–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Arizona NRCS State Technical Guide

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of a proposed change in the Arizona NRCS State Technical Guide for review and comment.

SUMMARY: The NRCS State Conservationist for Arizona has determined that a change is needed in Section IV of the NRCS State Technical Guide. Specifically, NRCS in Arizona will revise the NRCS Arizona Practice Standard for Nutrient Management (Code 590).

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Michael Somerville, State Conservationist, USDA–NRCS, 3003 North Central Avenue, Suite 800, Phoenix, Arizona 85012. Copies of this standard will be made available upon written request. You may also submit your electronic requests and comments to *donald.walther@az.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Donald Walther, Cropland Specialist, USDA–NRCS, 2000 E. Allen Road, Tucson, Arizona 85719–1596, telephone (520) 670–6602 Ext. 232.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS will receive comments relative to the proposed change. Following that period, a determination will be made by the NRCS in Arizona regarding disposition of those comments and a final determination of change will be made to the subject standard.

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

Michael Somerville,

State Conservationist.

[FR Doc. 04–12577 Filed 6–2–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted 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: U.S. Census Bureau.

Title: Boundary and Annexation Survey (BAS).

Form Number(s): BAS–1, BAS–2, BAS–3, BAS–4, BAS–5.

Agency Approval Number: 0607–0151.

Type of Request: Extension of a currently approved collection.

Burden: 36,000 hours.

Number of Respondents: 12,000.

Avg Hours Per Response: 3 hours.

Needs and Uses: This request is for the clearance of forms to continue the annual Boundary and Annexation Survey (BAS). The results of the BAS are needed to provide information documenting the creation of newly incorporated municipalities, minor civil

divisions (MCDs), counties, federally recognized American Indian areas (AIAs, which include reservations and/or off-reservation trust lands), and Alaska Native Regional Corporations (ANRCs), the dissolution of incorporated municipalities and MCDs, and changes in the boundaries of municipalities, MCDs, counties, AIAs, and ANRCs. The BAS information is used to provide an appropriate record for reporting the results of the decennial and economic censuses; annual surveys to support the annual population estimates program, and the American Community Survey, to update the municipal, MCD, county, AIA, and ANRC inventory for compliance with responsibilities specified in the OMB Circular A–16 that supports the spatial data steward responsibilities of the OMB E-Gov Geospatial Onestop, the FGDC Subcommittee on Cultural and Demographic Data, The National Map, the Federal Information Processing Standards (FIPS) program, and to update the Geographic Names Information Systems (GNIS) all of which are managed or maintained by the U.S. Geological Survey (USGS).

The BAS universe and mailing materials vary depending on the needs of the Census Bureau in fulfilling the requirements of its censuses and household surveys and our partnerships. In the years ending in 8, 9, and 0, the survey includes all governmental counties and equivalent areas, all incorporated municipalities, all governmental MCDs, and all federally recognized American Indian and Alaska Native areas. Each governmental entity surveyed receives all maps covering its jurisdiction and one or more forms. These 3 years coincide with the Census Bureau's preparations for the decennial census.

In the years ending with 2, and 7, the BAS generally includes all governmental counties and their statistical equivalents, all MCDs in the six New England states and those MCDs with a population of 10,000 or greater in the states of Michigan, Minnesota, New Jersey, New York, Pennsylvania and Wisconsin, those incorporated places with a population of 2,500 or greater, and all federally recognized American Indian and Alaska Native areas.

In the remaining years of the decade, years ending in 1, 3, 4, 5, and 6, the BAS generally includes all governmental counties and their statistical equivalents, all MCDs in the six New England states, and those incorporated places with a population of 5,000 or greater.

As part of our partnerships developed with state and county governments, the universe is modified with local knowledge to target those governments known to have changes and delete governments with no changes to minimize unnecessary burden.

Affected Public: State, local, or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 6.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 27, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–12509 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

School Enrollment Report

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 2, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Matthew Christenson, U.S. Census Bureau, Room 2335, Washington DC, 20233–8800, 301–763–2385.

SUPPLEMENTARY INFORMATION

I. Abstract

Each year the U.S. Census Bureau sends the school Enrollment Report, P–4 form, to the 30 state departments of education that do not publish enrollment data early enough in the year for us to use their published reports. Information requested includes fall public and nonpublic enrollment by grade for the state and counties. In six states we collect year-end enrollment. The U.S. Census Bureau uses school enrollment data in preparing estimates of state population. State population estimates are used by dozens of Federal agencies for allocating Federal program funds, as bases for rates of occurrences, and as input for Federal surveys. State and local governments, businesses, and the general public use state population estimates for planning and other information uses.

II. Method of Collection

The School Enrollment Report, P–4 form, is mailed each spring to approximately 30 state education agencies. We request fall public and nonpublic school enrollment by grade for the states and counties. Responses are returned and reviewed on a flow basis during the summer and early fall. Data collected will be used as input for the development of population estimates. The estimates are made in November, December, and January.

III. Data

OMB Number: 0607–0459.

Form Number: P–4.

Type of Review: Regular Review.

Affected Public: State education agencies.

Estimated Number of Respondents: 30.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 15 hours.

Estimated Total Annual Cost: $27.25 per hour, $409.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 181 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden

(including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 27, 2004.

Madeleine Clayton,

Office of the Chief Information Officer.

[FR Doc. 04–12508 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS)—Unemployment Insurance Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 2, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dennis Clark, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 763–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the collection of data via a Supplemental Survey of Unemployment Insurance Non-Filers to be conducted in conjunction with the January, May, July, and November 2005 CPS. Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9, authorize the collection of the CPS information. The Supplemental Survey of Unemployment Insurance Non-Filers is sponsored by the Department of Labor.

This supplement, which was last conducted in August 1993, will provide the Department of Labor with better information on how often unemployed individuals chose not to apply for unemployment benefits and their reasons for not doing so. Analysis from the survey data will be used by the Department of Labor to help improve the U. S. unemployment insurance system.

II. Method of Collection

The unemployment insurance information will be collected by both personal visit and telephone interviews in conjunction with the regular CPS interviewing during January, May, July, and November of 2005. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: Not available.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 6,000 (total for all 4 months).

Estimated Time Per Response: 1 minute.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182, and Title 29, U.S.C., Sections 1–9.

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 or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: May 27, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–12510 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–819]

Notice of Postponement of Final Antidumping Duty Determination: Certain Aluminum Plate From South Africa

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

Effective Date: **EFFECTIVE DATE:** June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 2004, the Department of Commerce ("the Department") published the *Notice of Preliminary Determination of Sales at Less-Than-Fair-Value: Certain Aluminum Plate from South Africa*, 69 FR 29262. The final determination of this investigation is currently due no later than July 27, 2004. Pursuant to section 735(a)(2) of the Tariff Act of 1930, as amended ("the Act"), on May 27, 2004, Hulett Aluminium (Pty) Limited ("Hulett"), the sole South African respondent, requested that the Department postpone its final determination in the investigation until 135 days after the date of the publication of the preliminary determination in the **Federal Register**.[1] In addition, in accordance with section 19 CFR 351.210(e)(2), Hulett requested that the Department extend the application of

[1] Hulett initially filed its deadline extension request on May 20, 2004, but subsequently revised it on May 27, 2004.

the provisional measures prescribed under section 733(d) of the Act to not more than six months.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the publication of the preliminary determination, if, in the event of an affirmative determination, a request for such postponement is made by exporters which account for a significant proportion of exports of the subject merchandise. The Department's regulations, at 19 CFR 351.210(e)(2), require that request by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting Hulett's request and are fully extending the due date for the final determination by 60 days, until no later than October 4, 2004.[2] Suspension of liquidation will be extended accordingly.

Dated: May 27, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–12605 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–884]

Antidumping Duty Order: Certain Color Television Receivers From the People's Republic of China

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

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on certain color television receivers from the People's Republic of China.

DATES: *Effective Date:* June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

For purposes of this order, the term "certain color television receivers" (CTVs) includes complete and incomplete direct-view or projection-type cathode-ray tube color television receivers, with a video display diagonal exceeding 52 centimeters, whether or not combined with video recording or reproducing apparatus, which are capable of receiving a broadcast television signal and producing a video image. "Incomplete" CTVs are defined as unassembled CTVs with a color picture tube (*i.e.*, cathode ray tube), printed circuit board or ceramic substrate, together with the requisite parts to comprise a complete CTV, when assembled. Specifically excluded from this order are computer monitors or other video display devices that are not capable of receiving a broadcast television signal.

The color television receivers subject to this order are currently classifiable under subheadings 8528.12.2800, 8528.12.3250, 8528.12.3290, 8528.12.4000, 8528.12.5600, 8528.12.3600, 8528.12.4400, 8528.12.4800, and 8528.12.5200 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive, and parts or imports of assemblages of parts that comprise less than a complete CTV.

Antidumping Duty Order

On May 27, 2004, the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing CTVs is materially injured by reason of less-than-fair-value imports of subject merchandise from the People's Republic of China (PRC). Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of CTVs from the PRC. These antidumping duties will be assessed on all unliquidated entries of CTVs from the PRC entered, or withdrawn from the warehouse, for consumption on or after November 28, 2003, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800 (Nov. 28, 2003).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than 4 months except where exporters representing a significant proportion of exports of the subject merchandise extend that 4-month period to not more than 6 months. In this investigation, the 6-month period beginning on the date of the publication of the preliminary determination ends on May 25, 2004. Furthermore, section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of CTVs from the PRC entered, or withdrawn from warehouse, for consumption on or after May 26, 2004, and before the date of publication of the ITC's final injury determination in the **Federal Register**. *See Notice of Amended Antidumping Duty Orders: Stainless Steel Bar From France, Germany, Italy, Korea, and the United Kingdom*, 68 FR 58660, 58661 (Oct. 10, 2003). Suspension of liquidation will continue on or after this date.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins listed below. The PRC-wide rate applies to all entries of the subject merchandise except for entries from the exporters that are identified individually below.

[2] Because 135 days from the date of publication of the preliminary determination (October 3, 2004) falls on a weekend, the Departments's final determination will be postponed until October 4, 2004, the first business day thereafter.

Manufacturer/Exporter	Weighted-average margin (in percent)
Haier Electric Appliances International Co	22.94
Hisense Import and Export Co., Ltd	22.94
Konka Group Company, Ltd	9.69
Philips Consumer Electronics Co. of Suzhou Ltd	22.94
Shenzhen Chaungwei-RGB Electronics Co., Ltd	22.94
Sichuan Changhong Electric Co., Ltd	26.37
Starlight International Holdings, Ltd	22.94
Star Light Electronics Co., Ltd	22.94
Star Fair Electronics Co., Ltd	22.94
Starlight Marketing Development Ltd.	22.94
SVA Group Co., Ltd	22.94
TCL Holding Company Ltd	21.25
Xiamen Overseas Chinese Electronic Co., Ltd	5.22
PRC-wide	78.45

This notice constitutes the antidumping duty order with respect to CTVs from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: May 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–12603 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Preliminary Results and Partial Rescission of Antidumping Duty New Shipper Review: Honey from the People's Republic of China

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

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty New Shipper Review.

SUMMARY: In response to requests from Cheng Du Wai Yuan Bee Products Co., Ltd ("Cheng Du") and Jinfu Trading Co., Ltd. ("Jinfu"), the U.S. Department of Commerce ("the Department") is conducting new shipper reviews of the antidumping duty order on honey from the People's Republic of China. The period of review covers the period December 1, 2002, through May 31, 2003. For Jinfu, we have preliminarily determined that it failed to demonstrate its entitlement to a new shipper review, while for Cheng Du we have preliminarily determined that it has not made sales at less than normal value. See the "Partial Rescission of New Shipper Review" section below. The preliminary results are listed below in the section titled "Preliminary Results of Review." Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza (for Jinfu) at (202) 482–3019 or Dena Aliadinov (for Cheng Du) at (202) 482–3362; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on honey from the People's Republic of China ("PRC") on December 10, 2001. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On June 30, 2003, the Department received timely filed requests from Cheng Du and Jinfu for new shipper reviews under the antidumping duty order on honey from the PRC, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations. Cheng Du identified itself as the producer and exporter of the merchandise subject to review. Jinfu identified itself as the exporter of subject merchandise produced by its supplier, Cixi City Yikang Bee Industry Co., Ltd. ("Cixi Yikang").

Under the new shipper provisions, an exporter or an exporter that is also a producer of the subject merchandise, in requesting a new shipper review, must certify to the following: (i) it did not export the merchandise to the United States during the period of investigation ("POI"); and (ii) it is not affiliated with any exporter or producer who exported the subject merchandise during that period. In addition, if the exporter is not the producer, then the entity that produced or supplied the subject merchandise must also certify to the above–listed requirements. Moreover, in an antidumping proceeding involving imports from a nonmarket economy country, the new shipper must also certify that its (and its producers') export activities are not controlled by the central government. If these provisions are met, the Department will conduct a new shipper review to establish an individual weighted–average dumping margin for such new shipper, if the Department has not previously established such a margin for the exporter or producer. (*See* generally section 351.214(b)(2) of the Department's regulations.)

The regulations further require that the entity making the request include in its request documentation establishing: (i) the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which it first shipped the merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. See section 351.214(b)(2)(iv).

Cheng Du's and Jinfu's requests were accompanied by information and certifications establishing that neither they nor their suppliers exported the subject merchandise to the United States during the POI, and that they were not affiliated with any company that exported subject merchandise to the

United States during the POI. Cheng Du and Jinfu provided information and certifications that demonstrated the date on which they first shipped and entered honey for consumption in the United States, the volume of that shipment, and the date of the first sale to the unaffiliated customer in the United States (Jinfu did not provide the latter information). *See* the "Partial Rescission of New Shipper Review" section below. Additionally, Cheng Du and Jinfu certified that neither their nor their suppliers' export activities are controlled by the central government.

Because the Department determined that Cheng Du's and Jinfu's requests met the requirements of section 351.214 of its regulations at that time, on August 11, 2003, the Department published its initiation of this new shipper review for the period December 1, 2002, through May 31, 2003. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 68 FR 47537 (August 11, 2003) ("*Initiation of New Shipper Reviews*"). Accordingly, the Department is now conducting this new shipper review in accordance with section 751(a)(2)(B) of the Act and section 351.214 of its regulations.

On August 4, 2003, we issued the Department's antidumping duty questionnaire to Cheng Du and Jinfu. Cheng Du and Jinfu submitted their Section A questionnaire responses on September 2, 2003 and September 16, 2003, respectively. On September 8, 2003, Cheng Du submitted its Section C and D questionnaire responses. On September 28, 2003, Jinfu submitted its Section C and D questionnaire responses. On October 8, 2003, petitioners submitted comments on Cheng Du's Sections A, C, and D responses. On November 10, 2003, petitioners submitted comments on Jinfu's Sections A, C, and D responses.

On October 29, 2003, we issued a supplemental questionnaire covering Cheng Du's Section A, C, and D questionnaire responses. We received Cheng Du's first supplemental questionnaire response on November 14, 2003. On December 3, 2003, petitioners submitted comments on Cheng Du's first supplemental questionnaire response.

On December 3, 2003, the Department provided interested parties with an opportunity to submit publicly available information regarding surrogate country selection and factors of production surrogate values for consideration in the preliminary results of this review.

On December 3, 2003, the Department issued a supplemental questionnaire to Cheng Du to forward to its importer ("importer questionnaire"). We issued a second supplemental questionnaire to Cheng Du, covering its first supplemental response, on December 8, 2003.

On December 11, 2003, we issued a supplemental questionnaire covering Jinfu's Section A, C, and D questionnaire responses. We received a response to the importer questionnaire from Cheng Du's importer on December 12, 2003. On December 17, 2003, petitioners submitted comments on the surrogate country selection. On December 22, 2003, we received Cheng Du's second supplemental questionnaire response. On December 30, 2003, we received Jinfu's first supplemental questionnaire response.

On January 5, 2004, petitioners submitted information on factors of production surrogate values for consideration. We did not receive any comments or information from Cheng Du. On January 5, 2004, we received surrogate value information from Jinfu.

Petitioners submitted comments for consideration in the Department's verification of Cheng Du's questionnaire responses on January 6, 2004. On January 12, 2004, petitioners submitted comments on Jinfu's first supplemental questionnaire response. On January 14, 2004, the Department extended the preliminary results of this new shipper review by 120 days until May 26, 2004. *See Honey from the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review*, 69 FR 2112 (January 14, 2004). We issued a second supplemental questionnaire to Jinfu, covering its first supplemental response, on January 16, 2004. We received Jinfu's second supplemental questionnaire response on January 23, 2004. Petitioners submitted comments for consideration in the Department's verification of Jinfu's questionnaire responses on January 29, 2004 and March 4, 2004, respectively.

Scope of the Antidumping Duty Order

The products covered by this review are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and the U.S. Customs and Border Protection ("CBP") purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(3) of the Act and section 351.307 of the Department's regulations, we conducted verification of the questionnaire responses of Cheng Du (January 12, 2004, through January 16, 2004) and Jinfu (February 2, 2004, through February 5, 2004). We used standard verification procedures, including on–site inspection of the production facilities of Cixi Yikang in Cixi, PRC (Jinfu's supplier of processed honey), and Cheng Du in Anshan, PRC, the sales and administrative office of Jinfu in Kunshan, PRC, and the sales office of Cheng Du in Chengdu, PRC, and the examination of relevant sales and financial records. We also conducted verification at the sales and administrative office of Jinfu's claimed U.S. affiliate, Jinfu Trading (USA), Inc., from March 8, 2004, through March 9, 2004, near Seattle, Washington. Our verification results are outlined in the New Shipper Review of Honey from the People's Republic of China (PRC) (A–570–863): Verification of U.S. Sales and Factors of Production for Respondent Cheng Du Wai Yuan Bee Products Co., Ltd. ("Cheng Du"), dated March 1, 2004 ("Cheng Du Verification Report"), the Third New Shipper Review of Honey from the People's Republic of China (PRC) (A–570–863); Verification of Intra–company U.S. Sales Information Submitted by Jinfu Trading Company, Ltd. and Factors of Production Information Submitted by Cixi City Yikang Bee Industry Co., Ltd., dated May 5, 2004 ("Jinfu Verification Report"), and the Third New Shipper Review of Honey from the People's Republic of China (PRC) (A–570–863); Sales Verification of Questionnaire Responses Submitted by Jinfu Trading Co., Ltd. on behalf of its U.S. affiliate, Jinfu Trading (USA), Inc., dated May 5, 2004 ("Jinfu USA Verification Report"). Public versions of these reports are on file in the Central Records Unit ("CRU") located in room B–099 of the Main Commerce Building.

Partial Rescission of New Shipper Review

For the reasons stated below, we are preliminarily rescinding, in part, the new shipper review with respect to Jinfu because documentation on the record shows that Jinfu was not affiliated with Jinfu USA during the

POR. *See* Memorandum to Richard O. Weible, through Abdelali Elouaradia, Analysis of the Relationship between Jinfu Trading Co., Ltd. and Jinfu Trading (USA), Inc. ("Affiliation Memo"), dated May 26, 2004 for further discussion. Specifically, in its Section A response and first supplemental response, Jinfu stated that Jinfu USA is wholly–owned by its president and was legally incorporated in the State of Washington on October 4, 2002. However, upon further examination of documents relating to the establishment/ incorporation of Jinfu USA, it appears that Jinfu and Jinfu USA were not affiliated at the time of Jinfu's first sale to the United States. In particular, the "Certificate of Incorporation," which was placed by Jinfu on the record, incorporating the precursor of Jinfu USA, Yousheng Trading (USA) Co., Ltd. ("Yousheng USA"), was issued by the State of Washington on October 4, 2002. *See* Jinfu's December 30, 2003, supplemental questionnaire response at Exhibit 7. The transaction in which Jinfu claims that Jinfu USA was an affiliated party, however, occurred only one month following Yousheng USA's incorporation. The extremely short period of time between the incorporation of Yousheng USA and the transaction in question, coupled with the fact that even the respondent admits that Yousheng USA officially became Jinfu USA ten days following the sale at issue, leads the Department to believe that on November 2, 2002 Yousheng and Jinfu were not affiliated. *See* Jinfu's December 30, 2003, supplemental questionnaire response at Exhibit 7. Moreover, based on other record evidence, we have reason to believe that the president of Jinfu did not own Jinfu USA until after the POR. Specifically, the ownership transfer agreement provided by Jinfu in its supplemental questionnaire response dated December 30, 2003, was dated and signed by Jinfu's president and the owner of Yousheng USA on October 25, 2003, approximately five months after the POR and over a year after Jinfu's first sale to the United States. For further details, see Affiliation Memo. Therefore, for all of the above reasons, the Department has concluded that this transaction should not be treated as an affiliated transaction as claimed by Jinfu.

In order to qualify for a new shipper review under 19 CFR 351.214, a company must provide certifications and documentation establishing, among other things, the date of the first sale to an unaffiliated customer in the United States. *See* 19 CFR 351.214(b)(2)(iv)(C). Given that Jinfu could not substantiate its affiliation with Jinfu USA at the time of its first sale to the United States or any time during the POR, we have preliminarily determined to treat the sale under review as an export–price ("EP") sale. Because Jinfu's certification (which it provided prior to the initiation of the new shipper review) does not include documentation establishing the date of the first sale to an unaffiliated customer in the United States, Jinfu is not entitled to a new shipper review. Therefore, we are preliminarily rescinding this review with respect to Jinfu.[1]

New Shipper Status

Based on questionnaire responses submitted by Cheng Du, and our verification thereof, we preliminarily determine that Cheng Du has met the requirements to qualify as a new shipper during the POR. We have determined that Cheng Du made its first sale and/or shipment of subject merchandise to the United States during the POR, and that it was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States. Therefore, for purposes of these preliminary results of review, we are treating Cheng Du's sale of honey to the United States as an appropriate transaction for this new shipper review.

Separate Rates

In proceedings involving nonmarket economy ("NME") countries, the Department begins with a presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate (*i.e.*, a PRC–wide entity rate) unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Cheng Du requested a separate company–specific rate.

As stated in the "Partial Rescission of New Shipper Review" section above, Jinfu did not qualify for a new shipper review under the Department's new shipper regulations. We are, therefore, preliminarily rescinding the new shipper review with respect to Jinfu. Consequently, consistent with the statement in our notice of initiation, the Department will not conduct a separate rates analysis for these preliminary results with respect to Jinfu, and thus, Jinfu will continue to be treated as part of the PRC–wide entity. *See Initiation of New Shipper Reviews.*

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company–specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) ("*Sparklers*"), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) ("*Silicon Carbide*").

Cheng Du provided separate–rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate–rates analysis to determine whether this producer/ exporter is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588, 20589.

Cheng Du has placed on the record a number of documents to demonstrate absence of *de jure control*, including the "Foreign Trade Law of the People's Republic of China" (May 12, 1994) and

[1] We further note, presuming that the unaffiliated sale price will be treated as an export price (≥EP≥), that the EP sale price appears to be aberrationally low relative to the average unit value of all comparable honey imports from the PRC during the POR. In addition, record inconsistencies regarding the establishment of Jinfu USA and its relationship with Jinfu at the time of the EP sale leads us to question the legitimacy of the U.S. importer of record/customer, and as a result, the *bona fides* of the reported EP sale itself. Specifically, as noted above, we preliminarily find that Jinfu USA was not established when the EP sale had occurred. Furthermore, the date discrepancies between the ownership transfer agreement, as explained above, and the information described in the corporate resolution documents taken during verification, contradict Jinfu's assertion that Jinfu and Jinfu USA were affiliated parties during the POR. See Affiliation Memo for further details. *See also* Verification Exhibit 1. These factors are significant to our analysis of the *bona fides* of this EP sale. Accordingly, even if the Department's findings were to change between the preliminary and the final results of this review as to the certification inadequacies of Jinfu's new shipper review request, the *bona fides* issue would need to be further addressed in our final analysis.

the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1988). The Department has analyzed such PRC laws and found that they establish an absence of de jure control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). At verification, we found that Cheng Du's business license and "Certificate of Approval–For Enterprises with Foreign Trade Rights in the People's Republic of China" were granted in accordance with these laws. Moreover, the results of verification support the information provided regarding these PRC laws. See Cheng Du Verification Report at 10–11. Therefore, we preliminarily determine that there is an absence of *de jure* control over Cheng Du's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Cheng Du has asserted the following: (1) it is a privately–owned company; (2) there is no government participation in its setting of export prices; (3) its chief executive officers and authorized employees have the authority to bind sales contracts; (4) it does not have to notify any government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) it is responsible for financing its own losses. Cheng Du's questionnaire responses do not suggest that pricing is coordinated among exporters of PRC honey. Furthermore, our analysis of the responses during verification reveal no other information indicating the existence of government control. *See* Cheng Du Verification Report at 11–12. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Cheng Du's export activities, we preliminarily determine that Cheng Du has met the criteria for the application of a separate rate.

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value, we compared their United States price to normal value, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

For Cheng Du, we based the United States price on export price ("EP"), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price ("CEP") was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. For Cheng Du, we deducted domestic inland freight and domestic brokerage and handling expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors–of–production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Cheng Du did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV for Cheng Du. See the Factor Valuation Memorandum for the Preliminary Results of the Antidumping Duty New Shipper Review of Honey from the People's Republic of China, dated May 26, 2004 ("Factor Valuation Memo"). A public version of this memorandum is on file in the CRU located in room B–099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the less–than–fair–value investigation of this order, we determine that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. Accordingly, we valued the factors of production using publicly available information from India. See Memorandum to the file, through Abdelali Elouaradia, Program Manager, Selection of Surrogate Country with Significant Producer of Comparable Merchandise in the New Shipper Review of Honey from the People's Republic of China, dated May 26, 2004.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. Where appropriate, we adjusted Indian import prices by adding foreign inland freight expenses to make them delivered prices. When we used Indian import data to value inputs sourced domestically by PRC suppliers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). When we used non–import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1; *Preliminary Determination of Sales at Less Than Fair Value: Floor–Standing, Metal–Top Ironing Tables and Certain*

Parts Thereof from the People's Republic of China, 69 FR 5127 (February 3, 2004). For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for India, as published in the International Monetary Fund's ("IMF's") publication, *International Financial Statistics*.[2]

We valued the factors of production as follows:

To value raw honey, we used the conservative rupee ("Rs.") price for one kilogram ("kg.") of raw honey, as stated in an article published in *The Tribune (of India)* on December 15, 2003, entitled, "Honey sweet despite price fall." A copy of the original article is attached at Attachment 15 of the Factor Valuation Memo. The article states that there had been a fall in the price of raw honey to Rs. 65 per kg. from a high of Rs. 105 per kg. during the past year. In their March 30, 2004 submission, petitioners proposed calculating a raw honey price based on the assumption that the price of raw honey peaked in January 2003 at 105 Rs/kg. and calculated an average increase in the rupee price from May 2002 to January 2003. Then, petitioners calculated the percentage decrease in the raw honey price from January 2003 (105 Rs./kg.) to 65 Rs./kg. in December 2003. Based on these percentage price decreases, petitioners calculated a monthly raw honey price for each POR month and then averaged these raw honey prices to generate a raw honey surrogate price for the POR. Since we are not certain specifically when the price of raw honey during the past year was 105 Rs./kg. or 65 Rs./kg., we are using the conservative price of 65 Rs./kg. Because the POR for this new shipper review is December 2002 through May 2003, we do not have evidence contradicting that the raw honey price was 65 Rs. per kg. during the POR. Hence, this 65 Rs. per kg. raw honey price is contemporaneous.

On January 5, 2004, Jinfu submitted an article, dated April 2003, entitled, "Girijan co–op targets Rs 135–cr turnover," which stated a raw honey price of 30 to 45 Rs./kg. for the Andhra Pradesh region of India. While this article is contemporaneous with the POR, we have determined that this article is not reliable because it provides information about the price of raw honey in a particular region of India rather than an Indian–wide price. Additionally, the article's information is based on data provided by an Indian honey cooperative (Girijan Cooperative Corporation Ltd.). Consistent with the less–than-fair–value investigation, we rejected data based on an Indian honey processing cooperative because we determined that such data represented the experience by a single processor of honey in a particular region of India. Generally, it is the Department's preference to use a publicly–available price that reflects numerous transactions between many buyers and sellers, because the experience of a single producer is less representative of the cost of an input in the surrogate country. *See Honey from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 62053 (October 31, 2003) and accompanying Issues and Decision Memorandum at Comment 2 ("*Wuhan NSR Final*").

Also, petitioners, in their January 5, 2004 filing, submitted raw honey price information from fourteen producers/processors, including several cooperatives. *See* Exhibit 1 of petitioners' submission dated January 5, 2004. However, we have determined that petitioners' raw honey price information is not reliable because it is not contemporaneous, as opposed to the information from the December 15, 2003 article from *The Tribune*. As stated above, we reject data based on Indian honey processing cooperatives. Therefore, the Department has preliminarily valued the raw honey input using the 65 Rs. per kg. surrogate price from *The Tribune* article dated December 15, 2003. See Attachment 3 of the Factor Valuation Memo. However, the Department intends to examine this issue further for the final results of this review. The Department therefore invites interested parties to submit comments on this issue for purposes of the final results.

To value beeswax, a raw honey by–product, we used the average per kg. import value of beeswax into India for the POR, using contemporaneous Indian import values of "beeswax, insect wax" under the Indian Customs' heading of "152190" obtained from the *World Trade Atlas*, which notes that its data was obtained from the Ministry of Commerce of India ("*World Trade Atlas*").

To value coal, we relied upon contemporaneous Indian import values of "steam coal" under the Indian Customs' heading of "27011902" obtained from the World Trade Atlas. We also adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. To value electricity, we used the third and fourth quarter 2002 total average price per kilowatt hour ("KWH"), adjusted for inflation, for "Electricity for Industry" as reported in the International Energy Agency's publication, *Key World Energy Statistics*, 2003. To value water, we used the water tariff rate (April 2000, through March 2001), as reported on the Municipal Corporation of Greater Mumbai's website. *See* http://www.mcgm.gov.in and Attachment 17 of the Factor Valuation Memo for source documents. We also adjusted the water rate for inflation.

To value packing materials (*i.e.*, paint and steel drums), we relied upon contemporaneous Indian import data under the Indian Customs' heading "3209" obtained from the World Trade Atlas, and a price quote from an Indian steel drum manufacturer, respectively. We adjusted the surrogate value for steel drums to reflect inflation. We also adjusted the surrogate values for packing materials to include freight costs incurred between the supplier and the factory.

To value factory overhead, selling, general, and administrative expenses ("SG&A"), and profit, we relied upon publicly–available information in the 2002–2003 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. ("MHPC"), a producer of the subject merchandise in India. We applied these rates to the calculated cost of manufacture and cost of production using the same methodology established in *Wuhan NSR Final*. *See Wuhan NSR Final* and accompanying Issues and Decision Memorandum.

For labor, we used the PRC regression–based wage rate reported at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression–based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics* 2002, International Labour Office (Geneva: 2002), Chapter 5B: Wages in Manufacturing.

To value truck freight, we used an average truck freight cost based on Indian truck freight rates on a per metric ton basis published in the *Iron and Steel Newsletter*, April 2002, which we adjusted for inflation.

For details on factor of production valuation calculations, *see* the Factor Valuation Memo, dated May 26, 2004.

[2] We also used wholesale price indices for India provided on the IMF's website, http://ifs.apdi.net/imf/.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank or by Dow Jones Reuter Business Interactive, LLC (trading as Factiva).

Preliminary Results of Review

We preliminarily determine that an antidumping duty margin does not exist for the following manufacturer and exporter[3]:

Manufacturer and Exporter	POR	Margin (percent)
Cheng Du Wai Yuan Bee Products Co., Ltd.	12/01/02 - 5/31/03	0.00

For details on the calculation of the antidumping duty margin for Cheng Du, *see* the Analysis of Data Submitted by Cheng Du Wai Yuan Bee Products Co., Ltd ("Cheng Du") in the Preliminary Results of New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China ("Cheng Du Analysis Memo"), dated May 26, 2004. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this new shipper review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer–specific assessment rates for the subject merchandise by aggregating the antidumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each of Cheng Du's importer's/customer's entries during the POR.

Cash–Deposit Requirements

Cheng Du or Jinfu may continue to post a bond or other security in lieu of cash deposits for certain entries of subject merchandise exported by Cheng Du or Jinfu. As Cheng Du has certified that it both produced and exported the subject merchandise, Cheng Du's bonding option is limited only to such merchandise for which it is both the producer and exporter. For Jinfu, which has identified Cixi Yikang as the producer of subject merchandise for the sale under review, Jinfu's bonding option is limited only to entries of subject merchandise from Jinfu that were produced by Cixi Yikang. Bonding will no longer be permitted to fulfill security requirements for Cheng Du's and Jinfu's shipments after publication of the final results of this new shipper review. The following cash–deposit rates will be effective upon publication of the final results of this new shipper review for all shipments of honey from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Cheng Du, the cash–deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Cheng Du, the cash–deposit rate will be the PRC country–wide rate (*i.e.*, 183.80 percent); (3) for all other PRC exporters which have not been found to be entitled to a separate rate (including Jinfu), the cash–deposit rate will be the PRC–wide entity rate of 183.80 percent; and (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with section 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. A hearing would normally be held 37 days after the publication of this notice, or the first business day thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this

[3] As stated in the "Separate Rates" section above, the Department has preliminarily determined that Jinfu is not entitled to a separate rate as we are rescinding the review. Thus, Jinfu's cash deposit rate will be the "PRC-wide Entity Rate."

requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 26, 2004.

James J. Jochum.

Assistant Secretary for Import Administration.

[FR Doc. 04–12602 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–001]

Sorbitol From France; Final Results of Expedited Sunset Review of Antidumping Order

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

ACTION: Notice of extension of time limit for final results of expedited sunset review: Sorbitol from France.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for its final results in the expedited sunset review of the countervailing duty order on sorbitol from France.[1] The Department intends to issue final results of this sunset review on or before June 15, 2004.

DATES: Effective Date: June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

Extension of Final Determination

On February 2, 2004, the Department initiated a sunset review of the antidumping order on Sorbitol from France. *See Initiation of Five-Year (Sunset) Reviews,* 69 FR 4921 (February 2, 2004). The Department determined that it would conduct an expedited (120 day) sunset review of this order based on responses from the domestic and respondent interested parties to the notice of initiation. The Department's final results of this review were scheduled for June 1, 2004. However, issues have arisen over the appropriate magnitude of the dumping margin likely to prevail for certain companies subject to the sunset review. Because of these complex issues, the Department will extend the deadline. Thus, the Department intends to issue the final results not later than June 15, 2004 in accordance with section 751(c)(5)(B).

Dated: May 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–12604 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] The Department normally will issue its final results in an expedited sunset review not later than 120 days after the date of publication in the **Federal Register** of the notice of initiation. However, if the Secretary determines that a sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days. *See* section 751(c)(5)(B) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–842, C–549–824]

Postponement of Preliminary Countervailing Duty Determinations: Bottle–Grade Polyethylene Terephthalate Resin from India and Thailand

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

SUMMARY: The Department of Commerce is extending the time limit for the preliminary determinations in the countervailing duty investigations of Bottle–Grade Polyethylene Terephthalate Resin ("BG PET Resin") from India and Thailand from June 17, 2004, until no later than August 21, 2004. This extension is made pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Sean Carey, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3782 or (202) 482–1394, respectively.

Postponement of Preliminary Determination:

On April 13, 2004, the Department initiated the countervailing duty investigations of BG PET Resin from India and Thailand. *See Notice of Initiation of Countervailing Duty Investigations: Bottle–Grade Polyethylene Terephthalate Resin from India and Thailand,* 69 FR 21086 (April 20, 2004). On May 21, 2004, the United States PET Resin Producers Coalition ("petitioners") made a timely request pursuant to 19 CFR 351.205(e) for the postponement of the preliminary determinations in accordance with section 703(c)(1) of the Act. Petitioners requested a postponement in order to allow time for the Department to conduct full and complete investigations of the programs set forth in the notice of initiation.

Because the Department finds no compelling reason to deny petitioners' request, we are postponing the time limit for the preliminary determinations in the countervailing duty investigations of BG PET Resin from India and Thailand until no later than August 21, 2004. Because August 21, 2004, is a Saturday, the actual due date for these preliminary determinations will be Monday, August 23, 2004. This extension is made pursuant to section 703(c)(1)(A) of the Act.

This notice of postponement is published pursuant to section 703(c)(2) of the Act.

Dated: May 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–12601 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040511148–4148–01; I.D. No. 050304B]

Endangered and Threatened Species: Proposed Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead

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

ACTION: Notice of proposed policy.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing a proposed policy that will address the role of hatchery produced Pacific salmon (*Oncorhynchus gorbuscha, O. keta, O. kisutch, O. nerka, O. tshawytscha,*) and steelhead (*O. mykiss*) in listing determinations under the Endangered Species Act of 1973 (ESA) as amended. This proposed policy would supersede the Interim Policy on Artificial (hatchery) Propagation of Pacific Salmon under the Endangered Species Act published in the **Federal Register** on April 5, 1993. The interim

policy requires revision for several reasons, including the need to take into account the results of scientific research that has occurred over the past decade, as well as the legal implications of a September 12, 2001, decision by the U.S. District Court in Oregon, which held that NMFS made an improper distinction under the ESA by excluding from a listing of Oregon Coast coho salmon under the ESA of certain artificially propagated salmon populations that were nevertheless determined by NMFS to be part of the same "distinct population segment" (DPS) as the listed natural populations. Under the proposed new policy, NMFS would determine the viability of each DPS, including both natural and hatchery populations, in conducting ESA status reviews and using the product of such reviews in making listing determinations of threatened or endangered under the ESA for Pacific salmon and steelhead. This policy applies only to Pacific salmon and steelhead and only in the context of making ESA listing determinations. NMFS also plans to provide separate guidance on how artificial propagation programs may contribute to salmon and steelhead conservation and recovery.

DATES: Information and comments on the proposed policy must be received at the appropriate address or fax number (See **ADDRESSES**), no later than 5 p.m. on September 1, 2004. In a forthcoming **Federal Register** document, NMFS will announce the dates and locations of public meetings to provide the opportunity for the interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed policy. NMFS encourages the public's involvement in such ESA matters.

ADDRESSES: Information and comments on this proposed policy should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232. Comments may also be sent via facsimile (fax) to 503 230–5435 or by e-mail. The mailbox address for providing e-mail comments is *hatch.policy@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Hatchery Listing Policy.

FOR FURTHER INFORMATION CONTACT: Donna Darm, NMFS, Northwest Region, (206) 526–4489; Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401, ext. 180.

SUPPLEMENTARY INFORMATION:

Background

NMFS is responsible for determining whether species, subspecies, or DPSs of Pacific salmon and steelhead are threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). To be considered for listing as threatened or endangered under the ESA, a group of organisms must constitute a species, which is defined in section 3 of the ESA to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Since 1991, NMFS has used the term "evolutionarily significant unit" (ESU) to refer to a DPS of Pacific salmon and steelhead, and has defined an ESU as a Pacific salmon or steelhead population or group of populations that (i) is substantially reproductively isolated from other conspecific populations, and (ii) represents an important component in the evolutionary legacy of the biological species (56 FR 58612; November 20, 1991). ESUs typically are composed of several genetically similar populations. (A few ESUs are composed of a single extant population, e.g., the Snake River sockeye, Snake River fall-run chinook, and Sacramento River winter-run chinook ESUs).

The viability of salmon and steelhead ESUs is characterized by the health, abundance, productivity, spatial structure, and genetic/behavioral diversity of the individual populations within the ESU (McElhany et al., 2001). An ESU with a greater abundance of productive populations will be more tolerant to environmental variation, catastrophic events, genetic processes, demographic stochasticity, ecological interactions, and other processes than one with a single or a few populations (Caughley and Gunn, 1996; Foley, 1997; Meffe and Carroll, 1994; Lande, 1993; Middleton and Nisbet, 1997). Similarly, an ESU that is distributed across a variety of well-connected habitats can better respond to environmental perturbations including catastrophic events, than ESUs in which connectivity between populations has been restricted or lost (Schlosser and Angermeier, 1995; Hanski and Gilpin, 1997; Tilman and Lehman, 1997; Cooper and Mangel, 1999). Genetic and behavioral diversity and the maintenance of local adaptations within an ESU allow for the exploitation of a wide array of environments, protect against short-term environmental changes, and provide the raw material for surviving long-term environmental change (Groot and Margolis,1991; Wood, 1995).

ESUs with fewer populations have greater risk of becoming extinct due to catastrophic events, and have a lower likelihood that the necessary phenotypic and genotypic diversity will exist to maintain future viability than ESUs with more populations. ESUs with limited geographic range are similarly at increased extinction risk due to catastrophic events. ESUs with populations that are geographically distant from each other, or are separated by severely degraded habitat, may lack the connectivity to function as metapopulations and are more likely to become extinct than populations that can function as metapopulations. ESUs with limited life-history diversity are more likely to become extinct as the result of correlated environmental catastrophes or environmental change that occurs too rapidly for an evolutionary response. ESUs comprised of a small proportion of populations meeting or exceeding these viability criteria may lack the "source" populations to sustain the non-viable "sink" populations during environmental downturns. ESUs consisting of a single population are especially vulnerable in this regard.

Assessing an ESU involves evaluating the current biological viability of the populations that comprise the ESU. The fact that the current biological status of an ESU does not reflect historical abundance, productivity, spatial structure or diversity does not mean that it is currently not viable, but historical status serves as an informative benchmark against which to weigh viability. Whether, upon assessment, the biological status of an ESU meets the ESA's standard for listing as either threatened or endangered i.e., the ESU is in danger of extinction throughout all or a significant portion of its range or is likely to become so in the foreseeable future--depends on which viability criteria it fails to meet, what the past trend has been, whether that trend is likely to continue, and how far below the benchmark it is.

Artificial Propagation of Pacific Salmon and Steelhead

Most of the ESUs listed as threatened or endangered have associated hatchery populations (that is, artificially propagated salmon and steelhead released into habitats within the historic geographic range of the ESU) as well as mixed populations of natural and hatchery fish.

The artificial propagation of hatchery fish presents both potential benefits and risks to the biological status of salmonid ESUs (e.g., Independent Scientific Advisory Board (ISAB), 2003;

Independent Multidisciplinary Science Team (IMST), 2001; ISAB, 2001; Hatchery Scientific Review Group, 2004). Artificial propagation has been shown to be effective in bolstering the numbers of naturally spawning fish in the short term under certain conditions, and in conserving genetic resources and guarding against the catastrophic loss of naturally spawned populations at critically low abundance levels (IMST, 2001).

There are, however, several reasons why long-term deleterious consequences of such supplementation may outweigh the short-term advantage of increased population size (NRC, 1995). In recent years, various studies and scientific works have identified some potential adverse effects of artificial propagation, including behavioral differences that result in diminished fitness and survival of hatchery fish relative to naturally spawned fish; genetic effects resulting from poor broodstock and rearing practices (e.g., inbreeding, outbreeding, domestication selection); incidence of disease; and increased rates of competition with and predation on naturally spawned populations. In assessing the risks to any particular population, however, it is often difficult to demonstrate conclusively that adverse effects are actually occurring, and, if they are demonstrated, how serious they are (CDFG/NMFS, 2001).

In response to these concerns, there have been recent changes in hatchery practices seeking to mitigate risks and enhance benefits of artificial propagation. Continued scientific work is necessary to identify and to measure these risks and benefits more completely, and to assess the operations of hatcheries that implement modern management practices. In light of the developing science on the positive and negative effects of hatchery programs on natural populations, the legacy of hatchery programs and the existing requirements to maintain many of them present a challenge for developing a framework for consideration of hatchery fish in listing determinations.

Past Pacific Salmon and Steelhead ESA Listings and the *Alsea* Decision

Section 3 of the ESA defines (i) an endangered species as "any species that is in danger of extinction throughout all or a significant portion of its range" and (ii) a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The statute enumerates five factors that may cause a species to be threatened or endangered (ESA section 4(a)(1)): (a) The present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence.

Since 1991, NMFS has conducted ESA status reviews of six species of Pacific salmonids in California, Oregon, Washington, and Idaho, identifying 51 ESUs and listing 26 of these ESUs as of September 2001. Twenty-three of the listed ESUs include hatchery populations, and in many of those cases the annual abundance of fish from hatcheries far exceeds that of naturally spawned fish. Thus, the manner in which the hatchery populations associated with an ESU are considered in making a determination whether the ESU should be listed can affect the outcome of that determination.

Section 4(b)(1)(A) of the ESA requires NMFS to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account efforts being made to protect the species. Accordingly, NMFS follows three steps in making its listing determinations. First, NMFS determines whether a population or group of populations constitutes an ESU; that is, whether the population(s) should be considered a "species" within the meaning of the ESA. Second, NMFS determines the biological status of the ESU and the factors that have led to its decline. Third, NMFS assesses efforts being made to protect the ESU and determines whether, in light of those efforts, the statutory listing criteria are satisfied.

In the past, NMFS focused on whether the naturally spawned fish are, by themselves, self-sustaining in their natural ecosystem over the long term. NMFS listed as "endangered" those ESUs whose naturally spawned populations were found to have a present high risk of extinction, and listed as "threatened" those ESUs whose naturally spawned populations were found likely to become endangered in the foreseeable future (that is, whose present risk of extinction was not high, but whose risk of extinction was likely to become high within a foreseeable period of time).

In its listing determinations, NMFS did not explicitly consider the contribution of the hatchery fish to the overall viability of the ESU, or whether the presence of hatchery fish within the ESU might have the potential for reducing the risk of extinction of the ESU or the likelihood that the ESU would become endangered in the foreseeable future. (The listing of Snake River fall chinook, however, is an exception. See 57 FR 14653; April 22, 1992.) NMFS frequently evaluated artificial propagation only as a factor in the decline of the naturally spawned populations within an ESU.

For each ESU where hatchery fish were present, NMFS reviewed the associated hatchery populations to determine how closely related the hatchery populations were to the naturally spawned populations. This review focused on the origin of the hatchery fish and their similarity to locally adapted naturally spawned fish. Factors included in this consideration were: genetic, life history, and habitat use characteristics; the degree to which the characteristics of the wild population may have been altered over time; and other factors that would affect the biological usefulness of hatchery fish for recovery.

Since 1993, NMFS has applied an interim policy on how it will consider artificial propagation in the listing and recovery of Pacific salmon and steelhead under the ESA (58 FR 17573, April 5, 1993). The 1993 policy provided guidance on the use of artificial propagation to assist in the conservation of these listed species and to help avoid additional species listings. The policy also provided guidance for evaluating artificial propagation in section 7 consultation, section 10 permitting, and recovery planning pursuant to the ESA.

When NMFS determined that an ESU should be listed as threatened or endangered, it applied its interim artificial propagation policy for Pacific salmon and steelhead. That policy provided that hatchery salmon and steelhead found to be part of the ESU would not be listed under the ESA unless they were found to be essential for recovery (i.e., if NMFS determined that the hatchery population contained a substantial portion of the genetic diversity remaining in the ESU). The result of this policy was that a listing determination for an ESU depended solely upon the relative health of the naturally spawning component of the ESU. In most cases, hatchery fish within the ESUs were not relied upon to contribute to recovery, and therefore were not listed.

Subsequently, in *Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154 (D. Or. 2001)(*Alsea decision*), the U.S. District Court in Eugene, Oregon, set aside NMFS' 1998 ESA listing of Oregon

Coast coho salmon (*O. kisutch*) because it impermissibly excluded hatchery fish within the ESU from listing and therefore listed an entity that was not a species, subspecies or DPS. The court stated: "NMFS concluded that nine hatchery stocks were part of the same Oregon Coast ESU/DPS as the 'naturally-spawned' populations but none of the hatchery stocks were included in the listing decision because NMFS did not consider them 'essential to recovery.' The distinction between members of the same ESU/DPS is arbitrary and capricious because NMFS may consider listing only an entire species, subspecies or distinct population segment ('DPS') of any species."

Although the court's ruling applied only to the Oregon Coast coho salmon ESU, the court's interpretation of the ESA implicitly called into question nearly all of NMFS' Pacific salmonid listing determinations since 1991. In addition, a preliminary review of the other 25 listing determinations suggested that hatchery populations were not treated consistently in those listings. Further, substantially more scientific research into artificial propagation issues had been completed since the interim policy was adopted in 1993.

Accordingly, NMFS determined that it would reconsider its 1993 interim policy on how it considers hatchery populations in making ESA listing determinations (67 FR 6215; February 11, 2002). The proposed policy set forth in this notice results from that reconsideration. It would supersede NMFS' 1993 interim artificial propagation policy.

Additional Legal Factors Influencing Consideration of Hatchery Fish

The ESA defines "fish or wildlife" to mean "any member of the animal kingdom, including without limitation any fish ." [emphasis added]. This definition includes fish bred in a hatchery. 16 U.S.C. 1532(8).

The ESA defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature." 16 U.S.C. 1532(16). NMFS cannot list any group of organisms that is not a species, subspecies or DPS. If NMFS determines that an ESU includes hatchery fish as well as naturally spawned fish, it must list or not list the entire ESU.

The statutory provisions of the ESA do not address the relationship between naturally spawned populations and hatchery populations regarding species conservation. One of the purposes of the ESA, however, is "to provide a means whereby the ecosystems upon which endangered species and threatened species may be conserved." 16 U.S.C. 1531(b). Further, in issuing incidental take permits pursuant to section 10(a)(1)(B), the Secretary is required to find that "the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild." This incidental take permit provision was patterned after the preexisting joint NMFS/U.S. Fish and Wildlife Service (FWS) consultation regulations to implement section 7 of the ESA, which defines "jeopardize the continued existence of" to mean "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both survival and recovery of a listed species in the wild. . . ." 50 CFR 402.02. Accordingly, the ESA does not preclude NMFS from giving special recognition to naturally spawned fish as a measure of the sustainability of the natural ecosystem.

Artificial Propagation under the ESA

Section 4(b) of the ESA requires the Secretary to make listing determinations after conducting a review of the status of the species, and after taking into account those efforts, if any, being made to protect the species. 16 U.S.C. 1533(b)(1)(A). Such efforts being made to protect the species include "conservation" practices, defined by the ESA as "all methods and procedures which are necessary to bring any endangered species or any threatened species to the point at which" the protections of the act are no longer necessary. 16 U.S.C. 1532(3). The methods and procedures of conservation include "propagation" and "transplantation."

Although the NMFS/FWS Policy Regarding Controlled Propagation of Species Listed Under the ESA (65 FR 56916; September 20, 2000) exempted Pacific salmon from its application (65 FR at 56921), the joint policy provides useful general guidance regarding the role of artificial propagation in the conservation and recovery of ESA-listed species, including plant, invertebrate, and vertebrate species. The joint policy notes several potential contributions of artificial propagation including: preventing extinction; providing opportunities for scientific research regarding beneficial propagation methods and technologies; maintaining genetic vigor and demographic diversity; maintaining refugial populations while habitat threats or vulnerabilities to catastrophic events are addressed; introduction or re-introduction of individuals to (re)establish self-sustaining populations; and enhancing existing wild populations to facilitate recovery.

While acknowledging the potentially supportive role that artificial propagation may play in the conservation and recovery of listed species, the joint policy stresses that artificial propagation is not a substitute for addressing factors responsible for a species' decline and that recovery of wild populations in their natural habitat is the first priority. The policy recognizes that genetic and ecological risks may be associated with artificial propagation, and requires that artificial propagation for species conservation and recovery be conducted in a manner that minimizes risks and preserves the genetic and ecological distinctiveness of the species to the maximum extent possible.

The proposed policy is intended to be consistent with the joint policy. This policy provides more specific guidance for considering artificial propagation issues particular to listing Pacific salmon and steelhead under the ESA. For Pacific salmon and steelhead, artificial propagation programs have been in place for many decades, serving a variety of purposes established by Congress and local authorities. Those programs now number in the hundreds. Whereas the joint policy pertains to recovery, the proposed policy would guide NMFS' consideration of existing artificial propagation efforts when evaluating the extinction risk of a salmon or steelhead ESU for purposes of making an ESA listing decision.

Because NMFS must base its listing determinations for Pacific salmon and steelhead on the risk of extinction of the entire ESU, including both natural and hatchery fish, the agency must consider the likelihood that the hatchery and naturally spawned components will contribute to the continued existence of the ESU into the future. Yet, because there are so many different ways in which hatchery-origin fish interact with the environment, there can be no uniform conclusion about the potential contribution of hatchery-origin fish to the survival of an ESU. For example, fish that are carefully reared under semi-natural conditions, then acclimated to a specific stream and introduced to re-establish, or expand the range of, the natural population, might make an important contribution to the rebuilding or support of that population. On the other hand, fish that are reared solely for the purpose of augmenting harvest and which are released away from the spawning and rearing areas

used by the naturally spawning fish in the ESU might contribute little to rebuilding or supporting other populations within the ESU, although their presence will increase the overall numbers of fish within the ESU.

Proposed Five-Point Policy

In light of the above considerations, NMFS proposes to adopt the policy set forth below to supersede NMFS' 1993 interim artificial propagation policy. The proposed policy would have five points. First, the proposed policy summarizes NMFS' existing ESU policy, and recognizes that genetic resources that represent the ecological and genetic diversity of a salmonid species can be found in hatchery fish as well as fish spawned in the wild.

The second point describes the process NMFS will use to delineate which populations are included in an ESU. In deciding which hatchery programs are likely to produce fish that would be included in an ESU, NMFS used terminology developed by the Salmon And Steelhead Hatchery Assessment Group (SSHAG, 2003)(available at *http://www.noaa.gov/fisheries/*). In its report, the SSHAG defines categories to describe the degree of genetic divergence between hatchery stock(s) and the natural population(s) that occupy the watershed into which the hatchery stock is released. In previous status reviews, the test for inclusion of hatchery stocks in a given ESU was a "substantial" divergence threshold evaluated relative to "historical" populations in the ESU. NMFS is proposing that it consider, as part of the ESU, those hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU. This proposal is consistent with the "moderate divergence" standard used in the SSHAG (2003) report. In practice, it is unlikely that this proposed change, as applied, would present an appreciably different threshold for the inclusion of hatchery stocks in an ESU compared to policy struck down by the court in the *Alsea* decision.

The third point states, consistent with the *Alsea* decision, that status determinations for Pacific salmonid ESUs will be based on the entire ESU, while recognizing the necessity of conserving natural populations and their habitat. This point also acknowledges the ESA's focus on the conservation and recovery of natural populations, the use of natural populations in reducing the risk of extinction, and their use as a point of comparison for monitoring/evaluating the level of genetic divergence of hatchery fish from naturally spawning fish in an ESU.

The fourth point describes the process for making status determinations for ESUs. The process incorporates the concept of Viable Salmonid Populations that was developed by NMFS scientists (McElhany et al., 2000, available at *http://www.nwfsc.noaa.gov*). Specifically, the process generally considers four key attributes of a viable salmonid population or conservation unit: abundance, productivity, spatial distribution, and genetic diversity. Under these criteria, a high abundance of one population of fish within an ESU is not, by itself, adequate to show that the ESU is viable. The analysis does not assign equal or predetermined weight to each of the four attributes, nor does it preclude consideration of other factors that may be biologically relevant in a particular circumstance. The analysis was designed to evaluate the viability of naturally spawning salmonid populations and requires the application of professional judgment when applied to salmonid populations that include hatchery fish because, for example, attributes such as productivity (number of adults returned per spawner) are measured differently for hatchery fish than for naturally spawning fish.

Finally, the fifth point recognizes that hatcheries can play an important role in fulfilling trust and treaty obligations with regard to harvest of some Pacific salmonid populations and provides a mechanism for using hatchery fish that are surplus to the conservation and recovery needs of the ESU.

Proposed Policy

For the foregoing reasons, NMFS proposes to adopt the following new policy on the consideration of hatchery fish in Endangered Species Act listing determinations for Pacific salmon and steelhead:

1. Under NMFS' Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon (ESU policy)(56 FR 58612; November 20, 1991), a distinct population segment (DPS) of a Pacific salmonid species is considered for listing if it meets two criteria: (a) it must be substantially reproductively isolated from other conspecific population units; and (b) it must represent an important component in the evolutionary legacy of the species. A key feature of the ESU concept is the recognition of genetic resources that represent the ecological and genetic diversity of the species. These genetic resources can reside in a fish spawned in a hatchery (hatchery fish) as well as in a fish spawned in the wild (natural fish).

2. In delineating an ESU to be considered for listing, NMFS will identify all populations that are part of the ESU, including populations of natural fish (natural populations), populations of hatchery fish (hatchery fish), and populations that include both natural fish and hatchery fish (mixed populations). Hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU (a) are considered part of the ESU, (b) will be considered in determining whether an ESU should be listed under the ESA, and (c) will be included in any listing of the ESU.

3. Status determinations for Pacific salmonid ESUs will be based on the status of the entire ESU. In assessing the status of an ESU, NMFS will apply this policy in support of the conservation of naturally-spawning salmon and the ecosystems upon which they depend, consistent with section 2(b) of the ESA. 16 U.S.C. 1531(b). Natural populations that are stable or increasing, are spawning in the wild, and have adequate spawning and rearing habitat reduce the risk of extinction of the ESU. Such natural populations, particularly those with minimal genetic contribution from hatchery fish, can provide a point of comparison for the evaluation of the effects of hatchery fish on the likelihood of extinction of the ESU.

4. Status determinations for Pacific salmonid ESUs generally consider four key attributes: abundance, productivity, genetic diversity, and spatial distribution. The effects of hatchery fish on the status of an ESU will depend on which of the four key attributes are currently limiting the ESU, and how the hatchery fish within the ESU affect each of the attributes. The presence within an ESU of hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU can affect the status of the ESU, and thereby, affect a listing determination, by contributing to increasing abundance and productivity of the ESU, by improving spatial distribution, and by serving as a source population for repopulating unoccupied habitat. Conversely, a hatchery program managed without adequate consideration of its conservation effects can affect a listing determination by reducing genetic diversity of the ESU and reducing the productivity of the ESU. In evaluating

the effect of hatchery fish on the status of an ESU, the presence of a long-term hatchery monitoring and evaluation program is an important consideration.

5. Hatchery programs are capable of producing more fish than may be immediately useful in the conservation and recovery of an ESU and can play an important role in fulfilling trust and treaty obligations with regard to harvest of some Pacific salmonid populations. For ESUs listed as threatened, NMFS will, where appropriate, exercise its authority under section 4(d) of the ESA to allow the harvest of listed hatchery fish that are surplus to the conservation and recovery needs of the ESU in accordance with approved harvest plans.

Request for Comments

NMFS intends to base the final policy on the best available scientific and commercial information available, and take advantage of information and recommendations from all interested parties. Therefore, NMFS solicits comments and suggestions regarding this proposed policy from the public, as well as other concerned governmental agencies and tribal governments, the scientific community, industry, or any other party (see **DATES** and **ADDRESSES**). In addition, in a separate notice, NMFS will schedule public meetings on this proposed policy to provide the opportunity for the public to give comments and to permit an exchange of information and opinion. NMFS encourages the public's involvement in such ESA matters. Written comments on the proposed policy are solicited (see **DATES** and **ADDRESSES**). The final decision on this policy is expected to be published by January 2005 and will take into consideration the comments and any additional information received by NMFS. Such communications may lead to a decision that differs from this proposal.

References

A complete list of all cited references, and an overview of the scientific literature regarding the potential benefits and risks of artificial propagation, is available upon request (see **ADDRESSES**) or via the internet at *http://www.nwr.noaa.gov/HatcheryListingPolicy/References.html*.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 28, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 040526164–4164–01 I.D. 050304G]

RIN 0648–ZB60

Submerged Aquatic Vegetation Culture and Restoration Projects in the Chesapeake Bay; Chesapeake Bay Non-native Oyster Research to Support an Environmental Impact Statement

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

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this notice is to invite the public to submit proposals for available funding provided through the NOAA Chesapeake Bay Office (NCBO) to assist in carrying out the following two initiatives under the Chesapeake Bay Studies Program (11.457) Submerged Aquatic Vegetation (SAV) culture and large-scale restoration in the Chesapeake Bay; and, research and development projects on non-native oysters to support the current effort to develop a Chesapeake Bay Environmental Impact Statement. Funds are available to state, local and Indian tribal governments, institutions of higher education, other non-profit and commercial organizations. This notice describes the conditions under which project proposals will be accepted and the criteria under which proposals will be evaluated. Depending upon the level of Federal involvement in these two initiatives, selected recipients will enter into either a cooperative agreement or a grant. NCBO intends to continue with several existing relationships and to make awards through these programs for currently funded multiple year projects pending acceptable scientific review.

DATES: Applications must be received by 5 p.m. eastern time on July 6, 2004. Applications received after that time will not be considered for funding.

Statements of Intent (see **SUPPLEMENTARY INFORMATION**) should be submitted by June 23, 2004.

ADDRESSES: Proposals must be submitted Derek Orner, Program Coordinator, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: Derek Orner, Program Coordinator, NOAA Chesapeake Bay Office, telephone: (410) 267–5660, or e-mail: *derek.orner@noaa.gov*. You can obtain a copy of the application package, including the full funding opportunity announcement for this solicitation, from Derek Orner. You can also obtain the application package from the NOAA Chesapeake Bay Office grants home page *http://noaa.chesapeakebay.net/grants*. The Statement of Intent (see **SUPPLEMENTARY INFORMATION**) should be sent to Derek Orner (*derek.orner@noaa.gov*).

SUPPLEMENTARY INFORMATION: *Electronic Access:* The full funding opportunity announcement for these Chesapeake Bay Studies programs is available via Web site: *http://www.ofa.noaa.gov/amd/SOLINDEX.HTML* or by contacting the program official identified above (see **ADDRESSES**). This announcement will also be available through Grants.gov at *http://www.Grants.gov*.

Funding Availability: This solicitation announces that approximately $550,000 may be made available through the Chesapeake Bay Studies submerged aquatic vegetation program and approximately $2,000,000 may be made available through the Chesapeake Bay Studies non-native oyster research program. This document describes how interested persons can apply for funding and how funding decisions will be made for both initiatives.

Authority: 16 U.S.C. 753a; 16 U.S.C. 661–666c.

CFDA: 11.457, Chesapeake Bay Studies.

Eligibility: Eligible applicants include state, local and Indian tribal governments, institutions of higher education, other nonprofit organizations and commercial organizations.

Cost Sharing Requirements: NOAA strongly encourages applicants applying for either initiative to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process. Priority will be given to proposals that propose cash rather than in-kind contributions.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Evaluation and Selection Procedures: An initial administrative review/screening is conducted by the NCBO to determine compliance with requirements/completeness including eligibility and relevance to the NCBO. Proposals that do not support the technical and management areas of interest of the Chesapeake Bay, as

defined in the full funding announcement, will not be considered for funding. All applications meeting the requirements of this solicitation will undergo an external technical review conducted by a minimum of three independent mail reviewers. All proposals will be individually evaluated, rated and ranked in accordance with the assigned weights of the evaluation criteria listed below. This review normally will involve experts from both NOAA and non-NOAA organizations.

For the SAV Program, the technical reviewers' ratings will be used to produce a rank order of the proposals. In making the final selections, the selecting official will award in rank order unless the proposal is justified to be selected out of rank order based upon one of more of the selection factors.

For the non-native oyster research program, the NCBO will convene a review panel consisting of at least three regional experts in the scientific and management aspects of oyster research from NOAA and non-NOAA organizations. Each member of the panel will review the technical review ranking and comments and individually make recommendations and provide a numerical ranking to the Program Coordinator. No consensus advice will be given by the reviewer panel members. The selection official selects proposals after considering the technical reviewer's comments, peer panel reviews and selection factors listed below. In making the final selections, the selecting official will award in rank order unless the proposal is justified to be selected out of rank order based upon one of more of the selection factors.

Evaluation Criteria: Proposals will be evaluated on the basis of the following evaluation criteria at the indicated weights:

(1) Importance/Relevance and Applicability of Proposal (15 points). This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities.

(2) Technical/Scientific Merit (15 points). This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

(3) Overall Qualification of Applicants (5 points). This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

(4) Project Costs (10 points). This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

(5) Outreach and Education (10 points). NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Selection Factors: The Program Coordinator may, in consultation with the NCBO staff, review the ranking of the proposals and the technical review comments and make recommendations to the NCBO Director. The average numerical ranking from the technical review will be the primary consideration in deciding which of the proposals will be recommended for funding to the NOAA Grants Officer. The NCBO Director shall select awards in rank order unless the proposal is justified to be selected out of rank order based upon 1, 2, 3, 4, or 5 of the following factors:

1. Availability of funding;
2. Balance/distribution of funds: geographically, by type of institutions, by type of partners, by research areas, by project types;
3. Duplication of other projects funded or considered for funding by NOAA or other Federal agencies;
4. Program priorities and policy factors;
5. Applicant's prior award performance; or
6. Partnerships and/or participation of targeted groups.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Limitation of Liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*). Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of nonindigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and CD–346 has been approved by the Office of Management and Budget under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0605–0001.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This action has been determined to be "not significant" for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative

Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. section 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexible Act, 5 U.S.C. 601 *et. seq.* are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: May 28, 2004.

Rebecca Lent,

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

[FR Doc. 04–12599 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–4163–07]

Financial Assistance for Educational Partnership Program (EPP) with Minority Serving Institutions (MSI), Environmental Entrepreneurship Program (EEP)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The NOAA Educational Partnership Program with Minority Serving Institutions hereby cancels the Environmental Entrepreneurship Program grant competition for fiscal year 2004.

FOR FURTHER INFORMATION CONTACT: Jewel G. Linzey, 301–713–9437.

SUPPLEMENTARY INFORMATION: The Environmental Entrepreneurship Program solicitation was originally included in the NOAA Omnibus Notice, Availability of Grant Funds for fiscal year 2004, published in the **Federal Register** on February 12, 2004 (Volume 69, Number 29).

The Educational Partnership Program cancels the grant program competition for fiscal year 2004 announced in that solicitation. The competition did not result in an adequate number of eligible applications to be recommended for funding. All applicants that submitted applications in response to the solicitation will be notified of the cancellation. The program anticipates announcing a fiscal year 2005 competition in the NOAA Omnibus Notice in June 2004. Subject to availability of funding, approximately $6 million will be available for the Environmental Entrepreneurship Program competition in 2005.

Dated: May 28, 2004.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 04–12600 Filed 6–2–04; 8:45 am]

BILLING CODE 3510–KD–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Division of Clearing and Intermediary Oversight, CFTC, (202) 418–5445; FAX: (202) 418–5426; e-mail: *ccummings@cftc.gov* and refer to OMB Control No. 3038–0049.

SUPPLEMENTARY INFORMATION:

Title: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters (OMB Control No. 3038–0049). This is a request for extension of a currently approved information collection.

Abstract: Commission Rule 140.99 requires persons submitting requests for exemptive, no-action, and interpretative letters to provide specific written information, certified as to completeness and accuracy, and to update that information to reflect material changes. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994).

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 the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2004 (69 FR 18058–01).

Burden statement: The respondent burden for this collection is estimated to average 6.6 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Securities Brokers and Dealers.

Estimated number of respondents: 410.

Estimated total annual burden on respondents: 3,197 hours.

Frequency of collection: On occasion, quarterly, monthly, annually.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0049 in any correspondence.

Christopher W. Cummings, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: May 27, 2004.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–12531 Filed 6–2–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 6, 2004.

Title and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Number 0730–0003.

Type of Request: Extension.

Number of Respondents: 15,000.

Responses Per Respondent: 1.

Annual Responses: 15,000.

Average Burden Per Response: 8 minutes (average).

Annual Burden Hours. 2,000 hours.

Needs and Uses: The information collection requirement is necessary to determine the kind and quality of services Defense Finance and Accounting Service (DFAS) customers want and expect, as well as their satisfaction with DFAS's existing services. DFAS will conduct a variety of activities to include, but not necessarily limited to, customer satisfaction surveys, transaction based on telephone interviews, Interactive Voice Response Systems (IVRS) telephonic surveys, etc. The surveys allow DFAS to obtain the knowledge necessary to provide the best service possible and provide unfiltered feedback from the customer for process improvement activities. The information collected provides data about customer perceptions and can help identify agency operations that require quality improvement, provide early detection of process or systems problems, and focus attention on areas where customer service and functional training or changes in existing operations will improve service delivery.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-For-Profit Institutions; State, Local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12472 Filed 6–2–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following approval, responsibility for this information collection and associated forms will be transferred to the Department of Homeland Security.

DATES: Consideration will be given to all comments received by July 6, 2004.

Title, Forms, and OMB Number: Telecommunications Service Priority System; SF Forms 314, 315, 317, 318 and 319; OMB Number 0704–0305.

Type of Request: Reinstatement.

Number of Respondents: 194.

Responses Per Respondent: 1.

Annual Responses: 1,198.

Average Burden Per Response: 12.3 hours.

Annual Burden Hours: 18,463.

Needs and Uses: The Telecommunications Service Priority (TSP) System forms are used to determine participation in the TSP system, facilitate TSP system administrative requirements, and to maintain TSP system database accuracy. The purpose of the TSP system is to provide a legal basis for telecommunications vendors to provide priority provisioning and restoration of telecommunications service supporting national security or emergency preparedness functions. The information gathered via the TSP system forms is the minimum necessary for the National Communications System to effectively manage the TSP system.

Affected Public: Business or Other For-Profit; State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12473 Filed 6–2–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 6, 2004.

Title, Form, and OMB Number: Request for Information Regarding Deceased Debtor; Form 2840; OMB Number 0730–0015.

Type of Request: Extension.

Number of Respondents: 3,000.

Responses Per Respondent: 1.

Annual Responses: 3,000.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 250 hours.

Needs and Uses: The Defense Finance and Accounting Service (DFAS) maintains updated debt accounts and initiates debt collection action for separated military members, out-of-service civilian employees, and other individuals not on an active federal government payroll system. The DD Form 2840 is used to obtain information on deceased debtors from probate courts. Probate courts review their records to see if an estate was established. The courts provide the name and address of the executor or lawyer handling the estate. From the information obtained, DFAS submits a claim against the estate for the amount due the United States.

Affected Public: State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room

10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12474 Filed 6–2–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–12]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–12 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 May 2003

In reply refer to:
I-04/004662

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-12, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $475 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-12

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Australia**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 68 million
Other	$407 million
TOTAL	$475 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 59 M1A1 Abrams Integrated Management (AIM) tanks, 7 M88A1 medium recovery vehicles, 80 AN/VRC-92F dual long-range Single Channel Ground and Air Radio System (SINCGARS) radios, 146 AN/PVS-7B night vision goggles, 73 M2 .50 caliber machine guns, 7 M2 .50 caliber Heavy Barrel machine guns, 1 ROC-V training device, tactical trucks, trailers, training devices, M240 machine guns, spare and repair parts, special tool and test equipment, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Army (ZZH)**

(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: See Annex attached**

(viii) **Date Report Delivered to Congress:**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Australia – M1A1 AIM Tanks

The Government of Australia has requested a possible sale of 59 M1A1 Abrams Integrated Management (AIM) tanks, 7 M88A1 medium recovery vehicles, 80 AN/VRC-92F dual long-range Single Channel Ground and Air Radio System (SINCGARS) radios, 146 AN/PVS-7B night vision goggles, 73 M2 .50 caliber machine guns, 7 M2 .50 caliber Heavy Barrel machine guns, 1 ROC-V training device, tactical trucks, trailers, training devices, M240 machine guns, spare and repair parts, special tool and test equipment, personnel training and equipment, publications, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $475 million.

This proposed sale would contribute to the foreign policy and national security of the United States by helping to improve the security of an ally, which has been and continues to be an important force for political stability and economic progress in the Western Pacific region. Furthermore, Australia's procurement of these tanks and associated equipment will dramatically improve its interoperability with U.S. Army and Marine Corps units, and will ensure that Australia is on the same path to transformation as is the United States. Australia's decision to buy the Abrams tank represents Australia's commitment to closely align the Australian Defense Force with the U.S. Department of Defense, and signals the strength of the U.S. and Australian security relationship.

Australia will use these tanks to modernize and harden the Australian Army, the land component of the Australian Defense Force. This proposed sale will significantly enhance the interoperability of the U.S. and Australian Defense Forces, and will guarantee U.S. and Australian Army's interoperability for the next twenty-five years.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: General Dynamics Land Systems of Sterling Heights, Michigan; United Defense Limited Partners of Arlington, Virginia; Oshkosh of Oshkosh, Wisconsin; and Stewart & Stevenson of Houston, Texas. There are no known offset agreements proposed in connection with this potential sale.

At present, it is estimated that two U.S. Government and six contractor representatives will be in Australia for the duration of the program. The final number of U.S. Government and contractor representatives required to support the program will be determined in joint negotiations as the program proceeds through the development, production, and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-12

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The M1A1 Abrams Integrated Management (AIM) tanks' components considered to contain sensitive technology in the proposed program are as follows:

a. The M1A1 Thermal Imaging System (TIS) constitutes a target acquisition system which, when operated with other tank systems gives the tank crew a substantial advantage over the potential threat. The TIS provides the M1A1 crew with the ability to effectively aim and fire the tank main armament system under a broad range of adverse battlefield conditions. The hardware itself is Unclassified. The engineering design and manufacturing data associated with the detector and infrared (IR) optics and coatings are considered sensitive. The technical data package is Unclassified with exception of the specifications for target acquisition range (Confidential), nuclear hardening (Confidential, restricted data) and laser hardening (Secret).

b. Major components of Special Armor are fabricated in sealed modules and in serialized removable subassemblies. Special armor vulnerability data for both chemical and kinetic energy rounds are classified Secret. Engineering design and manufacturing data related to the special armor are also classified Secret.

c. The M1A1 Tank 120mm Gun and Ammunition system is composed of a smooth bore gun manufactured at Watervliet Arsenal; "long rod" APFSDS warheads; and combustible cartridge case ammunition.

d. The use of the Advanced Gas Turbine-1500 (AGT-1500) Gas Turbine Propulsion System in the MlA1 is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT-1500 engine and transmission, and is Unclassified. Manufacturing processes associated with the production of turbine blades, recuperator, bearings and shafts, and hydrostatic pump and motor, are proprietary and therefore commercially competition sensitive.

e. A major survivability feature of the Abrams Tank is the compartmentalization of fuel and ammunition. Compartmentalization is the positive separation of the crew and critical components from combustible materials. In the event that the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected by the compartmentalization. Sensitive information includes the performance of the ammunition compartments as well as the compartment design parameters.

f. The Far Target Locator gives the tank commander or gunner the capability to use laser energy to locate a target and record the grid coordinates of the target. The coordinates are displayed on the Binocular Image Control Unit and are also electronically recorded for embedding in an electronic message. This allows the tank commander to call for fire so those targets beyond the range of the tank can be engaged by order of a tactical operations center.

g. The Enhanced Precision Lightweight Global Positioning System (GPS) Receiver (PLGR) is a GPS Ground Receiver that is self-contained, hand held and vehicle mounted Precise Positioning Service. The receiver is designed to collect and process the GPS satellite signals to derive position, velocity and time. This unit includes the PLGR Security Kit, which is composed of the Precise Positioning Service Security Module and the Auxiliary Output Chip.

h. The Enhanced Position Locations Reporting System (EPLRS) provides near real time, jam resistant, secure data distribution, and communications, identification, position location, navigation aid and automatic reporting for tactical forces. Various applications are the man portable, wheeled and tracked vehicles, aircraft, and grid reference.

i. The Single Channel Ground and Airborne Radio System (SINCGARS) radio is designed as a jam resistant, secure means of tactical communications. Available in either man portable or vehicular mounted configurations, the SINCGARS provides reliable, easily maintained tactical radio systems for command and control and data transfer.

j. The AN/PVS-7B Night Vision Goggles are considered items of a sensitive nature. These devices are man-portable night vision devices, which incorporate image-intensification technology. This technology is contained in a sealed image intensifier tube that is serialized and removable. Additionally, U.S. Government systems are equipped with a counter-measure device. Engineering and manufacturing data related to the image intensification tube sub-components (Photocathode, Microchannel Plate, and Tube Seals) are classified Confidential. Engineering, testing, and manufacturing data related to the counter-measure device are classified Secret. Additionally, all data related to vulnerabilities and weaknesses are classified Secret.

k. The Second Generation FLIR Horizontal Technology Integration Security (TIS) Classification Guide is a "second generation" thermal imaging sight that attaches to the Abrams tank Gunner's Primary Sight (GPS). The TIS provides the gunner an all-weather/night sight for surveillance, target acquisition, identification and engagement. The latest, "Block I" version of the TIS consists of two line replaceable units, the Thermal Receiving Unit (TRU) and the Binocular Image Control Unit (BICU). The TRU shares a portion of the same head mirror used by the GPS day channel to gather and process thermal information. The BICU injects thermal imagery and fire control symbology into the same GPS eyepiece used for day operations as well as providing a binocular eyepiece for use in battlefield surveillance in the thermal mode. The binocular eyepiece reduces gunner fatigue during long surveillance periods.

l. The Force XXl Battle Command Brigade and Below provides mounted and dismounted tactical combat, combat support, and combat service support units the ability to exchange situational awareness and command and control information, as well as, perform other battle command and battle command support functions.

2. The M88A2 components considered to contain sensitive technology in the proposed case are as follows:

a. The Air-Cooled V-Block Configuration Diesel Supercharged (AVDS)-1790-8CR Engine Propulsion System is a unique modification to the standard piston engine family found in the M60 series and the base M88A1. Manufacturing processes associated with the production of turbochargers, fuel injection system and cylinders are proprietary and therefore commercially competition sensitive.

b. The commercial hydraulic system components are not entirely unique in the armored vehicle world and the sub-components are Unclassified. Manufacturing processes associated with winches, hydraulic motors, control valves, and the like are proprietary and therefore, commercially competition sensitive.

c. The AN/VAS-5 Driver's Vision Enhancer is an uncooled thermal driving device issued to the United States Army, United States Marine Corps and United States Coast Guard. The sensor is commercial technology manufactured by Raytheon Systems Company and the display is commercial technology manufactured by C3 Corporation. Because this is commercial technology, information is available detailing all aspects of these items in open fora.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 04–12477 Filed 6–2–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity

AGENCY: Department of Defense.

ACTION: Notice of extension of the Myelomeningocele Clinical Trial Demonstration Project.

SUMMARY: This notice is to advise interested parties that the National Institute of Child Health and Human Development (NICHD) demonstration project in which Department of Defense (DoD) is participating will continue. The purpose of this study is to determine whether it is better to close a spina bifida defect before the baby is born or shortly after birth. The demonstration previously scheduled to end April 1, 2004, is now extended until the enrollment reaches 200 nationwide. This demonstration project is being conducted under the authority of 10 U.S.C. 1092.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones, Health Care Policy Analyst, Medical Benefits and Reimbursement Systems, TRICARE Management Activity (TMA), 16401 East Centretech Parkway, Aurora, CO 80011–9066, telephone (303) 676–3401.

SUPPLEMENTARY INFORMATION: DoD provided a notice in the **Federal Register** (68 FR 7351–7352) published on Thursday, February 13, 2003, which set forth basic procedures for participation in the myelomeningocele demonstration project sponsored by the NICHD, wherein DoD provides TRICARE reimbursement for all eligible DoD beneficiaries, including active duty service members, to receive prenatal and postnatal surgical intervention for the repair of myelomeningocele.

The NICHD expects a total of two hundred patients (nationwide) whose fetuses have been diagnosed with myelomeningocele at 16 to 25 weeks' gestation and who are over the age of 18 years would be enrolled and referred to the Data and Study Coordinating Center (DSCC) at George Washington University in Rockville, Maryland, to undergo an initial evaluation. Those individuals who remain eligible and interested would be assigned by the DSCC to one of the three centers (Vanderbilt University Medical Center in Nashville, the University of California at San Francisco, or Children's Hospital of Philadelphia) where final evaluation and screening will be performed.

DoD continues to expect six to sixteen TRICARE members each year would have a fetus with a prenatal diagnosis of spina bifida and would be eligible for the NICHD clinical trial and agree to participate.

Participation in this clinical trial will improve access to prenatal and postnatal surgical intervention for the repair of myelomeningocele for active duty members, former members, and their dependents when their condition meets protocol eligibility criteria.

Dated: May 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–12476 Filed 6–2–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary's Defense Advisory Board (DAB) for Employer Support of the Guard and Reserve (ESGR)

ACTION: Notice of open meeting.

SUMMARY: This DAB meeting will focus on the extension of full active-duty TRICARE benefits to Guard and Reservists members on reserve status and other matters as submitted to the Board from the floor. The DAB meeting will begin with briefings and end with a report of its draft findings and recommendations.

DATES: Friday, 25 June 2004, 10 a.m. to 4 p.m.; Saturday, 26 June 2004, 8 a.m. to 12 p.m.

ADDRESSES: *Day 1:* Secretary of Defense Conference Room, Pentagon. *Day 2:* The Ritz-Carlton Hotel, 1250 South Hayes Street, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: CPT Edward K. Hooks at 703–696–1386 x636 or by e-mail at *edward.hooks@osd.mil.*

Dated: May 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–12475 Filed 6–2–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,185,810: Method of Making High Temperature Superconducting Ceramic Oxide Composite with Reticulated Metal Foam, Navy Case 78,130 and U.S. Patent No. 6,700,067: High Temperature Superconducting Ceramic Oxide Composite with Reticulated Metal Foam, Navy Case No. 82,502.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: May 27, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–12563 Filed 6–2–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,259,347: Electrical Power Cooling Technique, Navy Case 78,465 and U.S. Patent Application Serial No. 09/364,256: Electrical Power Device Cooling Techniques, Navy Case No. 79,955.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: May 27, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–12564 Filed 6–2–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, July 12, 2004, from 8:30 a.m. to 11:15 a.m. The closed Executive Session of the meeting will be held on Monday, July 12, 2004, from 11:15 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, MD in the Bo Coppedge dining room of Alumni Hall.

FOR FURTHER INFORMATION CONTACT: Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of a partially closed meeting is provided per the Federal Advisory Committee Act (5 U.S.C. app. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7), (9) of title 5, United States Code.

Dated: May 27, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–12562 Filed 6–2–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meetings will remain open to the public.

DATES: The meetings will be held on Tuesday, June 29, 2004, from 1 p.m. to 5 p.m. and Wednesday, June 30, 2004, from 8:30 a.m. to 12 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held in the Damon Room of the National Center for Atmospheric Research, 1850 Table Mesa Drive, Boulder, CO 80305–5602.

FOR FURTHER INFORMATION CONTACT: Dr. Melbourne G. Briscoe, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–4120.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss NOPP activities. The meeting will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: May 27, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–12561 Filed 6–2–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Native Hawaiian Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.362A.

Dates:

Applications Available: June 3, 2004.

Deadline for Transmittal of Applications: July 6, 2004.

Deadline for Intergovernmental Review: September 1, 2004.

Eligible Applicants: Native Hawaiian educational organizations, Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and consortia of the previously mentioned organizations, agencies, and institutions.

Estimated Available Funds: $300,000.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Native Hawaiian Education program is to support innovative projects that enhance the educational services provided to Native Hawaiian children and adults.

Priorities: For the FY 2004 competition, we have established both an absolute priority and an invitational priority.

Absolute Priority

The absolute priority, which we have established in accordance with 34 CFR 75.105(b)(2)(iv), is from section 7205(a)(2)(C) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7515(a)(2)(C)). Under 34 CFR 75.105(c)(3), we consider only applications that meet this absolute priority.

This absolute priority is for a project in which the grantee must use the funds awarded to support a graduate-level educational program that addresses the needs of Native Hawaiians in fields or disciplines in which Native Hawaiians are underemployed, which may include the legal profession.

The Secretary interprets the authorizing statute to prohibit the grantee from using funds awarded under this competition for legal services, including preparation for pending or future litigation.

Invitational Priority

Within this absolute priority, we are particularly interested in applications that address the following invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This invitational priority is for a program provided by an institution of higher education that focuses on the history and culture of Native Hawaiians.

Program Authority: 20 U.S.C. 7515–7517.

Applicable Regulations: The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Competitive grant.

Estimated Available Funds: $300,000.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

III. Eligibility Information

1. *Eligible Applicants:* Native Hawaiian educational organizations, Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and consortia of the previously mentioned organizations, agencies, and institutions.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Lynn Thomas, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C126, Washington, DC 20202–6410. Telephone: (202) 260–1541 or by e-mail: *lynn.thomas@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the contact person listed in this section.

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.

3. *Submission Dates and Times*:

Applications Available: June 3, 2004.

Deadline for Transmittal of Applications: July 6, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 1, 2004.

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 program.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements*: Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in the application package.

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 Notification (GAN). We may also notify you informally.

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 of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of 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.

VII. Agency Contact

For Further Information Contact: Lynn Thomas, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C126, Washington, DC 20202–6410. Telephone: (202) 260–1541 or by e-mail: *lynn.thomas@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

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*.

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: May 27, 2004.

Raymond J. Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–12608 Filed 6–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Advisory Committee; Reestablishment

AGENCY: Department of Energy.

ACTION: Notice of reestablishment.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.65, title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Advanced Scientific Computing Advisory Committee has been reestablished for a two-year period beginning May 2004. The Committee will provide advice to the Director, Office of Science, on the Advanced Scientific Computing Research Program managed by the Office of Advanced Scientific Computing Research.

The reestablishment of the Advanced Scientific Computing Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee may be obtained from Mrs. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on May 27, 2004.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 04–12543 Filed 6–2–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7669–8]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit filed by AISI/ACCCI Coke Oven Environmental Task Force ("COETF"): *AISI/ACCCI Coke Oven Environmental Task Force* v. *U.S. Environmental Protection Agency*, No. 03–1167 (DC Cir.). Petitioners challenged EPA's final rule entitled "National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks," published at 68 FR 18008

(April 14, 2003), including emission limitations and work practice requirements for the control of hazardous air pollutants from pushing, quenching, soaking, and battery stacks at new and existing coke oven batteries. Under the terms of the proposed settlement agreement, 90 days after review of public comments received in response to this Notice, EPA will sign and submit for publication in the **Federal Register** a notice of proposed rulemaking to amend the Rule as set forth in Attachment A to this Agreement. Within 120 days after the close of the comment period on the proposal, EPA shall sign and submit for publication in the **Federal Register** a notice setting forth the Administrator's final decision on the issues covered by the proposal.

DATES: Written comments on the proposed settlement agreement must be received by July 6, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2004–0004, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. telephone: (202) 564–5523.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

Petitioners raise issues concerning: (a) The provisions requiring owners/operators of coke plants having a "pushing emission control device" ("PECD") to install, operate and maintain devices to monitor daily average fan motor amps, (or volumetric flow rate at the inlet of the control device and maintain daily average volumetric flow rate) at or above minimum levels established during initial performance tests (40 CFR 63.7290, 63.7323(c), 63.7326(a)(4), 63.73330(d), 63.7331(g) and (h)); and (b) the provisions requiring monthly inspections of pressure senors, dampers, damper switches and other equipment important to the performance of the total emissions capture system and requiring that a facility's operation and maintenance plan include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection (40 CFR 63.7300(c)(1)).

EPA and Petitioners (collectively, the "Parties") will jointly notify the Court that following the notice and comment period of this notice, the Parties anticipate that certain revisions to the Rule, if incorporated by EPA, will resolve COETF's challenge in this litigation. The Parties will jointly request that the Court's September 17, 2003 order remain in place and that the COETF's petition be held in abeyance pending implementation of, and subject to, the terms of this Settlement Agreement. Within 90 days after review of public comments received in response to this Notice, EPA will sign and submit for publication in the **Federal Register** a notice of proposed rulemaking to amend the Rule as set forth in Attachment A to this Agreement. Within 120 days after the close of the comment period on the proposal, EPA shall sign and submit for publication in the **Federal Register** a notice setting forth the Administrator's final decision on the issues covered by the proposal.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get A Copy Of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2004–0004 which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in

the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: May 24, 2004.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 04–12555 Filed 6–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7359–5]

Access to Confidential Business Information by Logistics Management Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Logistics Management Institute (LMI), of McLean, VA, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA–Hotline@.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under EPA IAG Number DW–36–92161001–0, LMI of 2000 Corporate Ridge, McLean, VA, will assist EPA's Office of Pollution Prevention and Toxics (OPPT) by providing Oracle operations and maintenance support for OPPT's Confidential Business Information Tracking system. The operations and maintenance support shall fill a necessary role in OPPT's ability to properly maintain the production application. Support shall include Oracle development work and Oracle server work.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA IAG Number DW–36–92161001–0, LMI will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the agreement.

LMI personnel will be given information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA, that the Agency may provide LMI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only. LMI personnel will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.*

Clearance for access to TSCA CBI under EPA IAG Number DW–36–92161001–0 may continue until April 1, 2005. Access will commence no sooner than June 10, 2004.

LMI personnel have signed nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: May 26, 2004.

Brian Cook,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–12557 Filed 6–2–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7669–7]

EPA National Advisory Council for Environmental Policy and Technology—Compliance Assistance Advisory Committee; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; notification of Public Advisory Committee teleconference meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Compliance Assistance Advisory Committee (CAAC) under the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on Thursday, June 10, 2004, from 11:30 p.m. to 1:30 p.m. eastern time. The meeting will be hosted out of Conference Room #6148, U.S. EPA, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, or how to register and obtain the phone number, please contact the individuals listed below.

Background: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing. Additional information concerning the NACEPT can be found on our Web site (*http://www.epa.gov/ocem*). The CAAC, a subcommittee of NACEPT, provides a Federal advisory forum from which the Agency can receive valuable multi-stakeholder advice and recommendations on enhancing EPA's compliance assistance program.

Purpose of Meeting: The CAAC will review and seek consensus on the work done to date on: (1) Strengthening the national compliance assistance network; (2) developing and testing performance measurement systems to demonstrate the effectiveness of compliance assistance; and (3) integration of compliance assistance into policies and practices of EPA and compliance assistance providers.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to gain access to the conference room on the day of the meeting or to obtain the teleconference phone number must contact Ms. Joanne Berman, Designated Federal Officer for the CAAC, U.S. Environmental Protection Agency (2224A), Office of Enforcement and Compliance Assurance, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–7064, fax at (202) 564–7083; or via email at *berman.joanne@epa.gov*. The agenda and materials for the meeting will be available to the public upon request. Written comments from the public are welcome before, during or after the meeting. Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Berman at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 19, 2004.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 04–12554 Filed 6–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7669–9]

Notice of Proposed Administrative Order on Consent Pursuant to Section 122(g)(4) of the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA), Container Recycling Inc. Superfund Site, Kansas City, KS, Docket No. CERCLA–07–2004–0117

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent, Container Recycling, Inc. Superfund Site, Kansas City, Kansas.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a de minimis settlement at the Container Recycling Inc. Superfund Site, 1161 S. 12th Street, Kansas City, Kansas, under an administrative consent order. EPA will consider public comments on the proposed settlement until July 6, 2004. Approximately 130 parties have returned signature pages accepting EPA's de minimis settlement proposal. Note that EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Sally McDaniel, U.S. Environmental Protection Agency, Region VII, Office of Regional Counsel, 901 North 5th Street, Kansas City, KS 66101, (913) 551–7671.

DATES: EPA will consider written public comments on the proposed settlement submitted by July 6, 2004.

ADDRESSES: Written comments may be submitted to Mrs. McDaniel at the above address within 30 days of the date of publication.

FOR FURTHER INFORMATION CONTACT: Sally McDaniel at (913) 551–7671.

Dated: May 20, 2004.

Cecilia Tapia,

Director, Superfund Division, Region VII.

[FR Doc. 04–12556 Filed 6–2–04; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 25, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 6, 2004. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0779.

Title: Amendment of Part 90 of the Commission's Rules to Provide for Use of the 200 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 2,124.

Estimated Time Per Response: 1–20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 35,249 hours.

Total Annual Cost: $998,348.

Privacy Act Impact Assessment: No.

Needs and Uses: This collection includes rules to govern the future operation and licensing of the 200–222 MHz band (220 MHz service). In establishing this licensing plan, FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminates unnecessary regulatory burdens, and enhances the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for a radio service, a certain number of regulatory and information burdens are necessary to verify licensees compliance with FCC rules. This collection of information is being revised because several reporting requirements have been met and are no longer in effect.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–12607 Filed 6–2–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of an Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Application for Waiver of Prohibition on Acceptance of Brokered Deposits by Adequately Capitalized Insured Institutions; (2) Real Estate Lending Standards; (3) Management Official Interlocks.

DATES: Comments must be submitted on or before August 2, 2004.

ADDRESSES: Interested parties are invited to submit written comments to Leibella A. Unciano, Legal Division (202) 898–3738, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

Comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leibella A. Unciano, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently Approved Collections of Information

1. *Title:* Application for Waiver of Prohibition on Acceptance of Brokered Deposits by Adequately Capitalized Insured Institutions.

OMB Number: 3064–0099.

Frequency of Response: On occasion.

Affected Public: Any depository institution seeking a waiver to the prohibition on the acceptance of brokered deposits.

Estimated Number of Respondents: 30.

Estimated Time per Response: 6 hours.

Total Annual Burden: 180 hours.

General Description of Collection: Section 29 of the Federal Deposit Insurance Act prohibits undercapitalized insured depository institutions from accepting, renewing, or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well-capitalized institutions may accept, renew, or roll over brokered deposits without restriction.

2. Title: Real Estate Lending Standards.

OMB Number: 3064–0112.

Frequency of Response: On occasion.

Affected Public: Any financial institution engaging in real estate lending.

Estimated Number of Respondents: 5,300.

Estimated Time per Response: 20 hours.

Total Annual Burden: 106,000 hours.

General Description of Collection: Institutions will use real estate lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size, nature and scope of their operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and documentation, approval and reporting requirements.

3.Title: Management Official Interlocks.

OMB Number: 3064–0118.

Frequency of Response: On occasion.

Affected Public: Management officials of insured nonmember banks and their affiliates.

Estimated Number of Respondents: 2.

Estimated Time per Response: 4 hours.

Total Annual burden: 8 hours.

General Description of Collection: The collection is associated with the FDIC's Management Official Interlocks

regulation, 12 CFR part 348, which implements the Depository Institution Management Interlocks Act (DIMIA). DIMIA generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies but allows the FDIC to grant exemptions in appropriate circumstances.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 27th day of May, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–12504 Filed 6–2–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, May 20, 2004, 10 a.m. meeting open to the public. This meeting was canceled.

DATE AND TIME: Tuesday, June 8, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 10, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2004–12: Democrats for the West.

Advisory Opinion 2004–14: United States Representative Tom Davis.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Acting Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–12673 Filed 6–1–04; 10:56 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011815–003.

Title: Transpacific Space Charter Agreement.

Parties: Hapag-Lloyd Container Linie; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Orient Overseas Container Line (Europe) Limited; Orient Overseas Container Line Inc.; P&O Nedlloyd Limited; and P&O Nedlloyd B.V.

Synopsis: The amendment would delete P&O Nedlloyd Limited and P&O Nedlloyd B.V. as parties to the agreement, revise the duration of the agreement, clarify the reciprocal nature of the agreement, and delete obsolete language. The amendment would also restate the agreement and make minor corrections to reflect the foregoing changes. The parties request expedited review.

Agreement No.: 011883.

Title: Maersk Sealand/Lykes Lines/TMM Lines Slot Exchange Agreement.

Parties: A.P. Moller-Maersk A/S; Lykes Lines Limited, LLC, and TMM Lines Limited, LLC.

Synopsis: The agreement would authorize the parties to exchange slots in the trade between the ports of Oakland and Los Angeles, California; Tacoma, Washington; Anchorage, Alaska, and Vancouver, British Columbia, on the one hand, and the ports of Nagoya, Kobe, Tokyo, and Yokohama, Japan; Kwangyang and Busan, South Korea; Kaohsiung, Taiwan; and Hong Kong, Shanghai, Ningbo, Yantian, Xiamen, and Qingdao, China. The agreement would terminate April 30, 2005.

Agreement No.: 201103–003.

Title: Memorandum Agreement Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs.

Parties: Members of the Pacific Maritime Association.

Synopsis: The amendment revises the basis for the man-hour and tonnage assessment rates.

Dated: May 28, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–12587 Filed 6–2–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR Part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Trans Atlantic Container Lines, Inc., 720 Frelinghuysen Avenue, Newark, NJ 07114.

Officers: Rosei Amoo-Acham Pong, Vice President (Qualifying Individual), Phipps E. Amoo-Achampong, President.

Ace Logistics, Inc., 1173 McCabe

Avenue, Elk Grove Village, IL 60007.
Officers: Kevin H. Choi, Director/Secretary (Qualifying Individual), Eunice Choi, Director/President.
Fil-Am Cargo Corporation, 8939 Woodman Avenue, Suite 11, Arleta, CA 91331.
Officers: Angelo D. Orlanda, President Qualifying Individual), Winnie H. Orlanda, Vice President.
Ever-OK International Forwarding Co., Ltd., 500 Citadel Drive, 2nd Floor, Los Angeles, CA 90040–1575.
Officers: Victoria L. Florio, Secretary (Qualifying Individual), Hu Bo, Director.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:
UTL International, Inc., 2505 Vista Industria, Compton, CA 90221.
Officers: Chi Ae Leem, President/Vice President (Qualifying Individual), Hun Kevin Leem, Secretary.
Southgate Shipping, Inc. dba Oceanways Consolidation Services, 68 Cypress Run, Bluffton, S.C. 29909.
Officers: Kurt Borcherding, Vice President (Qualifying Individual), Cathering Borcherding, President.
L & R Cargo, Inc., 8540 NW. 66th Street, Miami, FL 33166.
Officers: Ricardo Leon, Secretary, Cesar Lara, President (Qualifying Individuals).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:
Teclogistics, 1017 Northwest 100 Road, Suite 100 A, Houston, TX 77092, Josephine Treurniet, Sole Proprietor.
Hua Feng (USA) Logistics Inc., 11222 S. La Cienega Blvd., Suite 608, Inglewood, CA 90304
Officers: Rocyna Chui, Secretary (Qualifying Individual), Wang Dong, Director.

Dated: May 28, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–12588 Filed 6–2–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 16, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Mark Bradley Richardson, Thetford, Vermont, and Kimberly Ann Richardson, Atlanta, Georgia, to acquire voting shares of Wellington Bancorp, Inc., Springfield, Illinois, and thereby indirectly acquire Community Bank, Hoopeston, Illinois.

Board of Governors of the Federal Reserve System, May 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12503 Filed 6–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 17, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

A. Cass S. Young, Hugoton, Kansas; as co–trustee and Dennis L. Rowland, Montrose, Colorado, as successor special appointee, of the Young Family Trust; and Craig D. Young, Wichita, Kansas; as co–trustee of the Young Family Trust and the Mary F. Young Trust, to acquire control of Hugoton Bancshares, Inc., parent of Citizens State Bank, both in Hugoton, Kansas.

Board of Governors of the Federal Reserve System, May 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12620 Filed 6–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 25, 2004.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. WJR Corp., Eggemeyer Advisory Corp., Castle Creek Capital LLC, Castle Creek Capital Partners Fund I, LP, Castle Creek Capital Partners Fund IIa,

LP, and Castle Creek Capital Partners Fund IIb, LP, all of Rancho Santa Fe, California, on an aggregate basis, directly and indirectly to acquire up to 35 percent of the voting shares of State National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire Mercantile Bank Texas, Fort Worth, Texas

In addition to this application, State National Bancshares, Inc., Lubbock, Texas, also has applied to acquire 100 percent of Mercantile Bank Texas, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, May 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12501 Filed 6–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Hasten Bancshares, Inc., Indianapolis, Indiana; to engage *de novo* in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12502 Filed 6–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Community Corporation, Lexington, South Carolina; to acquire DutchFork Bancshares, Inc., Newberry, South Carolina, and thereby indirectly acquire Newberry Federal Savings Bank, Newberry, South Carolina, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than June 28, 2004.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Commercial Capital Corporation, De Kalb, Mississippi; to acquire Southern Insurance Marketers, Inc., De Kalb, Mississippi, and thereby engage in the sale of insurance in a town of less than 5,000 in population, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

C. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Irwin Financial Corporation, Columbus, Indiana; to acquire 51 percent of the voting shares of Waterway Financial, LLC, Grandville, Michigan, and thereby engage in mortgage origination and mortgage brokering activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12619 Filed 6–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 2:30 p.m. (e.d.t.), June 7, 2004.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

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 17, 2004, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Wilshire 4500 vote.

Parts Closed to the Public

4. Personnel matters.
5. Procurement matters.
6. Litigation.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: May 28, 2004.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 04–12655 Filed 5–28–04; 4:23 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–60]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*. Written comments should be received within 60 days of this notice.

Proposed Project

Control of Communicable Diseases: Restrictions on African Rodents, Prairie Dogs, and certain other Animals (OMB 0920–0615)—Reinstatement—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Section 361 of the Public Health Service (PHS) Act, [42 U.S.C. 264], authorizes the Secretary of Health and Human Services to make regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Existing regulations governing quarantine activities [42 CFR 71.54] provide for the issuance of permits by the Director, Centers for Disease Control and Prevention (CDC), for the importation of any animal host or vector of human disease, or any other animal capable of being a host or vector of human disease, contingent upon the importers meeting certain application and disease control requirements, to be established by the Director (OMB# 0920–0199).

In 2003, individuals in the United States began contracting monkeypox, and very likely as a result of contact with prairie dogs that had contracted monkeypox from diseased African rodents. Investigations indicated that a Texas animal distributor imported a shipment of approximately 800 small mammals from Ghana on April 9, 2003, and that shipment contained 762 African rodents, including rope squirrels (*Funiscuirus* sp.), tree squirrels (*Heliosciurus* sp.), Gambian giant rats (*Cricetomys* sp.), brushtail porcupines (*Atherurus* sp.), dormice (*Graphiurus* sp.), and striped mice (*Hybomys* sp.). Some animals were infected with monkeypox, and CDC laboratory testing confirmed the presence of monkeypox in several rodent species.

On June 11, 2003, the Director of CDC and the Commissioner of the Food and Drug Administration (FDA) issued a joint order prohibiting, until further notice, the transportation or offering for transportation in interstate commerce, or the sale, offering for sale, or offering for any other type of commercial or public distribution, including release into the environment, of:

- Prairie dogs (*Cynomys* sp.);
- Tree squirrels (*Heliosciurus* sp.);
- Rope squirrels (*Funisciurus* sp.);
- Dormice (*Graphiurus* sp.);
- Gambian giant pouched rats (*Cricetomys* sp.);
- Brush-tailed porcupines (*Atherurus* sp.), and
- Striped mice (*Hybomys* sp.).

In addition, CDC implemented an immediate embargo on the importation of all rodents from Africa (order *Rodentia*). On Nov. 4, 2003, the Department of Health and Human Services (the Food and Drug Administration (FDA) and CDC) promulgated an Interim Final Rule (IFR) restricting the importation of African rodents (42 CFR 71.56) and restricting domestic trade in certain African rodents and domestic prairie dogs (21 CFR 1240.63) (*see* 68 FR 62353). This interim final rule supersedes the June 11, 2003, order.

Under § 71.56(a) (2), prospective importers must submit a proposed import plan to CDC if they wish to import the specific rodents and rodent products covered by this rule. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such rodents, from embarkation in the country of origin to release from quarantine (if required). Information such as species, origin and intended use for the rodents and/or rodent products, transit information, isolation and quarantine (if required) procedures, and procedures for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and determine whether the measures being taken to prevent exposure of persons and animals during importation are adequate.

The burden imposed by this permit application is based on the estimated amount of time needed to perform the requirement multiplied by the number of responses. Five (5) respondents are estimated to submit an average of 2 responses each. Respondents operating with established permits would normally need less time to make submissions (30 minutes per response); new permit holders, estimated to be 7 in number, would each make no more than 1 full submission. All remaining submissions would be itinerary and/or change information only (10 minutes per response). The estimated total annual burden is 10 hours. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden in hours
Individuals	2	1	30/60	1
Businesses	5	1	30/60	3
Organizations—initial request	5	1	1	5
Organizations—subsequent request	5	1	10/60	1
Total	12			10

Dated: May 27, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–12568 Filed 6–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Simplified Procedures for Routine HIV Screening In Acute Care Settings

Announcement Type: New.

Funding Opportunity Number: 04156.

Catalog of Federal Domestic Assistance Number: 93.943.

Key Dates: Application Deadline: August 2, 2004.

Executive Summary

Approximately 250,000 people living with HIV in the United States are undiagnosed. Many persons with AIDS made multiple visits to hospitals, acute care clinics and managed-care organizations before their AIDS diagnosis, but were never tested for HIV. These encounters are missed opportunities for earlier detection of HIV infection. When HIV testing has been offered on a routine basis (independent of risk factors or symptoms suggestive of HIV) to patients in high-prevalence, high-volume acute care settings, many HIV-infected patients have been identified and the proportion of positive tests has often been equal to or greater than among publicly funded HIV counseling and testing sites and sexually transmitted disease (STD) clinics. Such findings suggest that broader implementation of routine HIV screening in high-prevalence health care settings is an important component of our national strategy aimed at identifying persons with undiagnosed HIV infection.

Many patients in high volume, high HIV prevalence acute care facilities that have implemented routine rapid HIV testing have not been offered HIV testing because of the limitations imposed by the required procedures and staffing. Many providers perceive pre-test discussions as too time-consuming. In addition, it may not be practical to commit sufficient staff to approach all patients to offer HIV testing and provide prior counseling during peak time periods. Prevention counseling may not be appropriate or feasible during many episodic or acute care visits. Thus, mandatory individual pretest counseling may be a barrier to offering HIV testing in these settings. Written brochures, when used to replace formal verbal pretest discussions, have been shown to increase the numbers of patients who can be offered HIV testing. In order to be successful in implementing routine HIV testing programs, pre-test procedures must be simplified to ensure that large numbers of patients can be screened for HIV in busy clinical settings.

The goal of this program is to examine changes in pre-test screening and education procedures which may increase the number of patients who test for HIV and who receive their results. The objectives of this program are to modify procedures and materials for providing pre-test information and to evaluate the feasibility, acceptability, and success of these simplified procedures at the participating site(s).

I. Funding Opportunity Description

Authority: This program is authorized under the Public Health Service Act, sections 301, 311, and 317 (42 U.S.C sections 241, 243 and 247(b)), as amended.

Purpose: The purpose of the program is to develop and evaluate simplified procedures and materials to improve the programmatic success of existing routine HIV screening projects in acute care settings. Simplified procedures are necessary to ensure that large numbers of patients can be screened for HIV in busy clinical settings. This program addresses the "Healthy People 2010" focus area(s) of HIV. Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs. In addition, this program addresses the Division of HIV/AIDS Prevention priorities: Develop new methods for diagnosing HIV infection.

Activities

Awardee activities for this program are as follows:

- Modify the facility's existing procedures for HIV pre-test education and recruitment in order to increase the number of patients tested and who receive their results, by developing materials or procedures such as brochures, posters, videos, or group waiting room activities to promote routine HIV screening and provide pre-test information.
- Continue to routinely offer rapid HIV testing to patients in the acute care center with the modified pre-test procedures.
- Assess the programmatic outcomes of the modified procedures (*e.g.*, number of patients offered testing, number of patients accepting testing, number of patients tested, number of newly diagnosed HIV infections, seropositivity rate among persons tested). Periodically provide CDC with these data.
- Assess patient and provider satisfaction with the modified procedures.
- Assess patient comprehension of pre-test messages delivered through modified materials relative to existing procedures.
- Utilize program data to revise the procedures to improve the project's effectiveness.
- Participate in conference calls, meetings, and site visits.
- Collaborate with CDC to disseminate the findings and details on modified procedures and materials.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Assist in the development and review of the modified pre-test counseling procedures, activities, and printed materials.
- Provide guidance and assistance in the development of data collection instruments as well as data management systems and procedures.
- Facilitate conference calls, grantee meetings, and site visits.
- Assist in the analysis and dissemination of findings.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $120,000.

Approximate Number of Awards: One–Two.

Approximate Average Award: $60,000–$120,000 (This amount includes both direct and indirect costs).

Floor of Award Range: $60,000.

Ceiling of Award Range: $120,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: one year.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as

documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations or by governments and their Bona Fide Agents, such as:

- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the State as eligible to submit an application under the State eligibility in lieu of a State application. If you are applying as a bona fide agent of a State or local government, you must provide a letter from the State or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Eligibility will be limited to organizations that are currently conducting a systematic evaluation of the implementation of routine rapid HIV testing in high volume, high HIV prevalence acute care facilities. Facilities must have implemented procedures for routine, voluntary HIV screening with rapid HIV tests consistent with CDC's Program Announcement 01187, entitled, "Routinely recommending HIV and STD Counseling and Testing in Ambulatory Care Clinics and Emergency Rooms" (the program announcement and examples of protocols developed by successful applicants are available for review at [Web site]). Applicants must have conducted such a program for a minimum of four months by the time of application and collected data throughout this time period regarding the numbers of patients who were seen in the facility, were offered HIV testing, accepted testing, were tested, and were newly diagnosed with HIV. Only these facilities will have historical data regarding the barriers and outcomes of current procedures, which will be required for comparison to modified procedures.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: (770) 488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a program narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 20 if your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed: Background and Need, Objectives, Methods, Monitoring and Evaluation, Timeline, Staffing, Budget Justification. The budget justification will not be counted in the stated page limit.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes, Organizational Charts, Letters of Support and commitment indicating the funding basis for the routine HIV screening program upon which this project will be based, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: August 2, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does

not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for State and local governmental review of proposed Federal assistance applications. You should contact your State single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your State's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for the purchase of HIV testing kits. Funds are to be used for developing and evaluating modified procedures, not to provide the entire financial basis for the HIV screening program. Applicants must demonstrate that there is a mechanism in place to support routine HIV screening activities.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA—04156, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Background, Need, and Objectives (20 Points)

Does the applicant summarize pertinent data from ongoing activities and outcomes regarding the implementation of routine rapid HIV testing in acute care facilities? Does the applicant use existing programmatic data to identify goals and propose modifications consistent with the objectives of this project? Does the applicant identify potential alterations to the existing procedures that are likely to increase the number and proportion of patients tested for HIV? Does the applicant discuss the potential effectiveness of these modifications? Are goals and objectives for the program modifications and evaluations clearly stated? Are the objectives reasonable and measurable?

2. Methods (30 Points)

Are the proposed methods scientifically sound and appropriate to the program objectives and the time frame of the project period? Do they demonstrate an understanding of the issues to be addressed and evaluated? Are they feasible? Does the applicant describe how the proposed procedures differ from the existing pre-test activities and procedures conducted according to standard procedures? Will the proposed methods and changes accomplish the program goals? Are the methods designed to utilize feedback and revise and improve program effectiveness?

3. Monitoring and Evaluation (30 Points)

Does the applicant provide a plan for evaluating the effectiveness of the programmatic changes? Is the project designed in such a way that the assessment of satisfaction will not interfere with the assessment of programmatic outcomes of the new procedures? Can the outcomes be compared to those from the prior project activities?

4. Capacity (20 Points)

Does the applicant have sufficient facilities and the staff to conduct this project and the ability to train the necessary staff? Does the institution support a routine approach to HIV screening? Does the applicant demonstrate that a mechanism is in place to fund routine HIV screening activities, such that awarded funds will be used to develop and evaluate modified procedures rather than to provide the entire financial basis for the screening program per se?

5. Budget (Not Scored)

Is the budget reasonable and justification adequate for the proposed activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCHSTP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect the funding decision: Preference will be given to organizations who have demonstrated their ability to implement and evaluate existing programs which evaluate the routine use of rapid HIV tests in high prevalence, high volume acute care facilities.

V.3. Anticipated Announcement and Award Dates

Awards will be issued on or about September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report and annual progress report no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For program technical assistance, contact: Sheryl Lyss, MD, Extramural Project Officer, Division of HIV/AIDS Prevention, National Center for HIV/STD and TB Prevention, 1600 Clifton Road, MS E–46, Atlanta, Georgia 30333, Telephone: (404) 639–2093, E-mail: *SLyss@cdc.gov.*

For financial, grants management, or budget assistance, contact: Julia Valentine, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2732, E-mail: *jvx1@cdc.gov.*

Dated: May 27, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–12565 Filed 6–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Linkage to HIV Care Demonstration Project

Announcement Type: New.

Funding Opportunity Number: 04154.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates:

Letter of Intent Deadline: June 18, 2004.

Application Deadline: July 23, 2004.

Executive Summary: Data from several studies indicate that 30 to 40 percent of persons with new HIV diagnoses are not linked to an HIV care provider within 12 months of their HIV diagnosis. However, such early, prompt linkage to care is important for the health of the infected person, as well as putatively that person's potential to infect others. A recently completed Antiretroviral Treatment Access Study("ARTAS") in four United States (US) cities indicates that providing case managers to help such newly diagnosed persons into care significantly increases the percentage of persons who see an HIV care provider once within six months and twice within twelve months after their initial HIV diagnoses. Such case management was also cost-effective (about one thousand dollars per additional person successfully linked). The purpose of this project is to test the feasibility of providing intensive case management to HIV-infected persons newly diagnosed at publicly funded clinics or testing locations throughout the U.S.

I. Funding Opportunity Description

Authority: Section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 274b(k)(2)), as amended.

Purpose: The purpose of the program is to link HIV-infected persons recently diagnosed at publicly funded clinics in the U.S. to HIV care providers. The project is intended for communities with socio-economically disadvantaged HIV-infected persons. There are compelling personal and public health benefits to get recently diagnosed HIV-infected persons into care before they get sick. The personal benefits include delayed disease progression, early beginning of antiretrovirals, regular monitoring of their immunologic status (CD4+ cell count) and virologic status (HIV–1 RNA copies in plasma). The public health benefits include reducing HIV transmission due to earlier reduction in infectious HIV–1 RNA copies in the blood; and earlier entry into prevention for positives programs in clinical settings.

Data from the original linkage to care clinical trial ARTAS and from other research studies indicate that about 40 percent of socioeconomically disadvantaged HIV-infected individuals are not yet linked to clinical care within a year of their HIV diagnosis. The ARTAS research project showed that case managers trained in strengths-based case management methodology can facilitate entry into clinical care at a very reasonable cost. After one year, 64 percent of case managed participants and 50 percent of non-case managed participants were linked to care. Furthermore, the ARTAS model required only two to three face-to-face meetings on average with a case manager over a maximum of three months. The intent of the demonstration project is to determine how well ARTAS can be implemented locally. Data will be collected at each local site to determine success rates and costs to implement linkage case management.

The proposed project should specifically address the following objectives:

1. To assess and compare linkage to care rates in the existing referrals program with linkages rates after

instituting a program of linkage case management in recently HIV-infected persons in the local area.

2. To evaluate the public health impact, including costs or cost savings from the project, on local HIV care providers and local agencies responsible for HIV diagnosis. This program addresses the "Healthy People 2010" focus area of HIV.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV, STD and TB Prevention (NCHSTP): Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services. Performance measure: Increase the proportion of HIV-infected people who receive some form of medical care within three months of HIV diagnosis. National target for this measure for FY 2004 is 80 percent.

Measurable outcomes will be in alignment with Strategy number three of CDC's Advancing HIV Prevention initiative: Prevent new infections by working with persons diagnosed with HIV.

Activities: Awardee activities for this program are as follows:

• To develop, in consultation with CDC, an implementation plan within 90 days of the award, which specifies how the following program activities will be carried out:

—Assess the use and availability of HIV-directed case managers in the local area and determine whether new hires, or re-directed case managers best achieve the project goals.

—Develop a recruitment plan for connecting HIV-infected persons recently diagnosed at publicly funded clinics with the case managers from this project.

—Assess the local publicly funded HIV and sexually transmitted disease (STD) testing and counseling sites in the local area to determine the optimum recruitment locations.

—Develop a tracking plan to ensure participants can be located during the entire required 12-month period.

—Enroll into the project a minimum of 50 (target: 75 percent underserved) HIV-infected persons within three months of their HIV diagnoses.

—Abstract participant medical visit and laboratory data from HIV care provider medical charts to confirm self-reported linkage to care.

• To evaluate, with the assistance of CDC, the effect of the linkage case management program on rates of use of HIV care providers compared to the existing referrals program rates.

• To evaluate, with the assistance of CDC, the overall cost of linkage case management and the cost per client served.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

• Provide technical guidance as needed by the project through regular site visits and group conference calls.

• Arrange separate funding for strengths-based case management training of the applicant's case managers for the project.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $1,750,000.

Approximate Number of Awards: Nine.

Approximate Average Award: $175,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $275,000 (Ceiling amount will only be considered if applicant can demonstrate ability to enroll approximately 100 persons. It is anticipated that the average amount will be awarded to applicants who can demonstrate ability to enroll approximately 50 persons.)

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by eligible community-based organizations (CBO) or state or local governments or their bona fide Agents. Eligible CBOs must meet all criteria listed below.

A. Have tax-exempt status.

B. Be located in the area(s) where services will be provided or have provided services in the area for at least three years.

C. Demonstrate a substantial number (more than 50 percent) of clients currently served are socioeconomically disadvantaged (*i.e.*, individuals with no health insurance or with combined annual household incomes of less than $20,000).

D. Have committed to a Memorandum of Understanding (MOU) with local health authorities that will ensure ability to recruit recently diagnosed HIV-infected persons from local health authority clinics as demonstrated by a letter from the local health authority.

Have sufficient confidential HIV testing and counseling capacity to enroll these persons as described in 'Activities'. The executed MOU must be submitted to CDC by December 1, 2004. Failure to meet this deadline will result in suspension of funding.

E. Not be a private or public university or college, or private hospital.

F. Not be a 501(c)(4) organization.

Eligible state or local governments or their Bona Fide Agents: Recent CDC Surveillance data indicate the South comprises an increasing share of the estimated number of new AIDS cases diagnosed each year compared to the rest of the U.S. In an effort to better address this disparity by assuring better linkages to care, eligible state or local government agencies must be from one of the following states: Alabama, Arkansas, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia. If you are applying as a bona fide Agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other Eligibility Information

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying

activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- The proposed principal investigator(s)
- The proposed case manager(s), or from where they will be recruited
- The site(s) from which recently diagnosed HIV cases will be recruited, and their approximate demographic breakdown.

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Overview or Summary
- Background and Justification of Need
- Objectives
- Project Design and Methods (including a timeline and enrollment and follow-up methods)
- Plan for Evaluation
- Budget Justification (will not be counted in the stated page limit)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Letter(s) of support from medical provider(s) where participants will enroll for HIV medical.
- Curriculum vitas.
- Other letters of support.

Eligibility: Suggested length of ten pages or less.

This section will not count toward the 25 page limit of your application, but it will determine if you are eligible for funding. Place all eligibility documents demonstrating eligibility consistent with section III.1. of this announcement, in Appendix A, labeled Proof of Eligibility.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Letter of Intent (LOI) Deadline Date: June 18, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: July 23, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does apply to this program.

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed Federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- None

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs. Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Lytt Gardner, CDC/NCHSTP, Mail Stop E–45, 1600 Clifton Rd, Atlanta, GA 30333, Telephone: 404–639–6163, Fax: 404–639–6127, E-mail: *lig0@cdc.gov.*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04154, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the objectives stated at the end of Section I of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted in the narrative of the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Ability to recruit and track recently diagnosed HIV-infected persons not already linked to a care provider. Documentation to substantiate ability to recruit sufficient number of persons should be included in an attachment. (30 points)

a. Evidence of ability to recruit, during a 6-month period and using the existing referral program, at least 25 persons who were diagnosed with HIV within three months before their recruitment date. (This constitutes a "baseline" or comparison population.)

b. Evidence of ability to recruit, during a 12-month period and using the new case management program, at least 50 persons who were diagnosed with HIV within three months before their recruitment date. (This constitutes the population receiving linkage care management.)

c. Evidence of ability to recruit persons with generally poor access to health care.

d. Evidence of ability to successfully track and re-interview project participants.

e. Evidence of ability to collect complete data from project participants.

2. Documentation that the needs with respect to linkage to care of recently infected persons are not being met by existing resources. (20 points)

a. Be specific about how this need is not met by existing HRSA or CDC funding.

b. Applicants are expected to present data or credible estimates of the percentage of recently diagnosed HIV-infected persons who do not get quickly linked to a care provider.

3. Description and Justification of Project Plans (25 points)

a. Familiarity and quality of experience pertinent to proposed public health activities.

b. Understanding of project objectives and activities from Section I of this announcement, as evidenced by high quality of the proposed plan.

c. Thoroughness of plans for data management, including medical record abstraction; reasonableness of data collected; and quality control measures.

d. Capacity to conduct project as evidenced by the quality of experience with similar or related work conducted previously, including demonstration of ability to collect and manage data in a timely manner.

4. Staffing, Facilities and Timeline (25 points)

a. Availability of qualified personnel with realistic and sufficient percentage time commitments and the clarity of the descriptions of the duties and responsibilities of project personnel.

b. Adequacy of plans for project oversight to assure quality of data.

c. Letter(s) of support from medical provider(s) where participants will enroll for HIV care.

d. Adequacy of facilities, equipment, and systems for management of data security and patient confidentiality.

e. Adequacy of timeline for completion of project activities.

5. Other (not scored)

a. Budget: Is the budget reasonable, clearly justified, consistent with the intended use of funds, and allowable? All budget categories should be itemized.

b. Past Performance: Has the applicant been the recipient of funds for CDC projects in the past? If so, what was the level of performance?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by NCHSTP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect the funding decision:

- Areas of high HIV/AIDS incidence.
- Populations with unique or especially difficult circumstances.
- A balance in the number of awards between CBOs and state or local government agencies to determine feasibility of implementing this project in a variety of settings.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements

• AR–15 Proof of Non-Profit Status

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives

b. Current Budget Period Financial Progress

c. New Budget Period Program Proposed Activity Objectives

d. Budget

e. Additional Requested Information

f. Measures of Effectiveness

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact:

Lytt Gardner, CDC/NCHSTP, Mail Stop E–45, 1600 Clifton Rd, Atlanta, GA 30333, Telephone: 404–639–6163, Fax: 404–639–6127, E-mail: *lig0@cdc.gov.*

For financial, grants management, or budget assistance, contact:

Charles Elder, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2889, E-mail: *cfe4@cdc.gov.*

Dated: May 27, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–12567 Filed 6–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV Prevention With National Medical and Nursing Associations

Announcement Type: New.

Funding Opportunity Number: 04152.

Catalog of Federal Domestic Assistance Number: 93.118.

Key Dates: Letter of Intent Deadline: June 18, 2004.

Application Deadline: July 19, 2004.

Executive Summary: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program with national medical and nursing associations or societies to promote and assist with the implementation of CDC's Initiative Advancing HIV Prevention: New Strategies for a Changing Epidemic. The initiative aims to reduce barriers to early diagnosis of HIV infection and increase access to quality medical care, treatment, and ongoing prevention services. It emphasizes the use of proven public health approaches to reducing the incidence and spread of disease. As with other sexually transmitted diseases (STDs) or any other public health problem, principles commonly applied to prevent disease and its spread will be used, including appropriate routine screening, identification of new cases, partner notification, and increased availability of sustained treatment and prevention services for those infected.

The initiative consists of four key strategies:

• Make HIV testing a routine part of medical care.

• Implement new models for diagnosing HIV infections outside medical settings.

• Prevent new infections by working with persons diagnosed with HIV and their partners.

• Further decrease perinatal HIV transmission.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 274b(k)(2)), as amended.

Purpose: The purpose of this program is to: (1) Develop and disseminate provider educational and training materials to members; (2) promote HIV testing as part of routine medical care; (3) promote the incorporation of HIV prevention into the medical care of HIV-infected persons; (4) foster the exchange of information, ideas and experiences of health care providers on what works for preventing HIV; and (5) stimulate involvement and participation of regional, state and local chapters. This program addresses the "Healthy People 2010" focus area of HIV.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP): (1) Decrease the number of persons at high risk for acquiring or transmitting HIV infection; (2) increase the proportion of HIV-infected persons who know they are infected; (3) increase the proportion of HIV-infected persons who are linked to appropriate prevention, care, and treatment services; (4) strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

Activities: Awardee activities for this program are as follows:

a. Evaluate members for (1) knowledge, attitudes and perceptions regarding the role of clinicians in HIV prevention; (2) adherence to practice standards and federal or state clinical guidelines for the prevention and treatment of HIV/AIDS and other STDs; (3) knowledge, attitudes and barriers to the incorporation of the CDC/HRSA/NIH/IDSA Recommendations to Incorporate HIV Prevention into the Medical Care of Persons Living with HIV, into their clinical practice.

b. Assess capacity of regional, State and local chapters to support the dissemination of educational and training materials.

c. Develop and disseminate provider training and educational materials to promote HIV testing as part of routine medical care; promote the incorporation of HIV prevention into the medical care of persons living with HIV; and develop educational materials that providers can use with their patients. Dissemination can be done directly to members or through regional, State and local chapters.

d. Sponsor a variety of forums for presentation of information on HIV testing as part of routine medical care; use of rapid testing in medical settings, including acute care clinics and emergency departments; and incorporation of HIV prevention into the medical care of HIV-infected persons.

e. Conduct an evaluation of the intervention to measure changes in attitudes, clinical behaviors and practices.

f. Collaborate with other funded national organizations and the Division of HIV/AIDS Prevention, CDC, in the

development of training and educational materials for health care providers and consumers.

g. Participate in two grantee meetings per year as defined by the project officer.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Facilitate and assist in the development of training materials and curricula, administrative tools and policy manuals.

b. Participate in the evaluation design.

c. Provide information and technical expertise in the area of HIV prevention, including prevention for persons living with HIV.

d. Work with each awardee to facilitate and support collaboration among funded national organizations as well as CDC-funded HIV prevention and surveillance programs.

e. Provide a synthesis of known best practices and interventions regarding HIV risk assessment and testing, HIV prevention in medical settings, rapid HIV testing, and prevention for HIV-infected persons.

f. Collaborate in the development of forums that focus on HIV testing as part of routine medical care; use of rapid testing in medical settings, including acute care clinics and emergency departments; and incorporating HIV prevention into the medical care of HIV-infected persons.

g. Collaborate with awardees on presentations and publications of evaluation findings.

h. Conduct site visits to monitor progress of the programs.

II. Award Information

Type of Award: Cooperative agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $500,000.

Approximate Number of Awards: Three-Four.

Approximate Average Award: $100,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: $75,000.

Ceiling of Award Range: $175,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

III.1. Eligible applicants

- Applications may be submitted by public and private nonprofit organizations.

This program is limited to national professional medical and nursing associations or societies that have the capability to reach a broad constituency to assure the dissemination of consistent HIV prevention messages nationwide. These associations or societies must represent practicing clinicians.

Funding preference will be given to national organizations with prior experience in developing and disseminating provider educational and training materials to promote prevention services.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be reviewed and, if awarded, only partially funded.

Note: Title 2 of the United States Code, section 1611, states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: one.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- A summary of the project.

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 20.

If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.

- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Abstract (not to exceed one page): An executive summary of your program covered under this announcement.

2. Program Plan (Not to exceed 19 pages): In developing the application under this announcement, please review the recipient activities and, in particular, evaluation criteria and respond concisely and completely. The program plan should address activities to be conducted over the entire two-year budget period. Include proposed methods and staffing plan for the project.

3. Budget: Submit an itemized budget for the entire two-year project period, and supporting justification that is consistent with your proposed program plan. Include travel costs for not more than two staff members to attend two 2-day meetings in Atlanta each year.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information can include:

- Organizational chart, resumes for proposed staff, a letter of support from the board of directors, and letters of support from other project partners or collaborators;
- Samples of previous projects related to this proposal.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain

a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, *see* the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter. Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: June 18, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: July 19, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds from this cooperative agreement should not be used for major purchase of equipment or construction. Requests for equipment such as computers and Liquid Crystal Display (LCD) Projectors for training require detailed justification.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Raul A. Romaguera, DMD, MPH, Associate Director for Prevention in Care, Division of HIV/AIDS Prevention, CDC, 1600 Clifton Road, NE.—MS D–21, Atlanta, GA 30333. Telephone: (404) 639–2004, fax (404) 639–0897, e-mail: *RRomaguera@cdc.gov*.

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management–PA# 04152, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation. Your application will be evaluated against the following criteria:

1. *Scope of Plan (30 points):* The plan delineates your steps to implement and evaluate your program. It must be written for your entire two-year project period and include a succinct statement of the intent, desired outcome(s) of the project and clearly stated and measurable outcome objectives to be achieved by the project. These objectives must be quantifiable in terms of outputs and time frame for achievement. The statement of intent and outcome objectives should address the purpose of the cooperative agreement, which is to: (1) Develop and disseminate provider educational and training materials to members; (2) promote HIV testing as part of routine medical care; (3) promote the incorporation of HIV prevention into the medical care of HIV-infected persons; (4) foster the exchange of information, ideas and experiences of health care providers on what works for preventing HIV; (5) stimulate involvement and participation of regional, state and local chapters.

2. *Methods (30 points):* Clear statement of approach and activities required to achieve the stated HIV prevention outcome objectives. The relationship between activities and objectives must be explicitly demonstrated. Description of activities must include a delineation of resources required, identification of the personnel who will perform the work and a management plan with description of the systems and procedures which will be used to manage the progress, budget and operations of the project.

3. *Personnel and Staffing (25 points):* The qualifications and experience of key personnel, other professional staff and support staff available to carry out HIV prevention activities.

4. *Evaluation (15 points):* Detailed plans for evaluating the degree to which the program achieves the purpose of the cooperative agreement (as listed in the purpose section, and above in the description of the scope of plan). Measures must be objective and quantitative and must measure the intended outcome.

5. *Budget (reviewed, but not scored):* There is an upper limit of $175,000. An application submitted with a budget over $175,000, will be reviewed and, if awarded, only partially funded. The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and

allowable. All budget categories should be itemized.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by the NCHSTP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect the funding decision:

This program is limited to national professional medical and nursing associations or societies that have the capability to reach a broad constituency to assure the dissemination of consistent HIV prevention messages nationwide. These associations or societies must represent practicing clinicians.

Funding preference will be given to national organizations with prior experience in developing and disseminating provider educational and training materials to promote prevention services.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–5 HIV Program Review Panel Requirements.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–16 Security Clearance Requirement.
- AR–20 Conference Support.
- AR–24 Health Insurance Portability and Accountability Act Requirements.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For program technical assistance, contact: Raul A. Romaguera, DMD, MPH, Associate Director for Prevention in Care, Division of HIV/AIDS Prevention, CDC, 1600 Clifton Road, NE.—MS D–21, Atlanta, GA 30333. Telephone: 404–639–2004, fax: 404–639–0897, e-mail: *RRomaguera@cdc.gov.*

For financial, grants management, or budget assistance, contact: Kang Lee, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2733, e-mail: *kil8@cdc.gov.*

VIII. Other Information

Additional information regarding Advancing HIV Prevention: New Strategies for a Changing Epidemic is available at the following Internet address Web site: *http://www.cdc.gov/nchstp/od/nchstp.html.*

Dated: May 27, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–12569 Filed 6–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04121]

Public Health Capacity Development for International Organizations Engaged in War-Related Injuries and Mine Action; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a cooperative agreement for public health capacity development for international organizations engaged in war-related injuries and mine action was published in the **Federal Register** Tuesday, March 30, 2004, Volume 69, Number 61, pages 16577–16579. The notice is amended as follows: The application deadline is no longer June 1, 2004. The deadline has been extended to June 21, 2004.

Dated: May 27, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–12570 Filed 6–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Economic Studies of Vaccines and Immunization Policies, Programs and Practices, Program Announcement Number 04092

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Economic Studies of Vaccines and Immunization Policies, Programs and Practices, Program Announcement Number 04092.

Times and Dates: 1 p.m.–1:20 p.m., June 28, 2004 (Open). 1:20 p.m.–5 p.m., June 28, 2004 (Closed).

Place: Teleconference number 1.888.469.3149, Pass Code 55672.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04092.

FOR FURTHER INFORMATION CONTACT: Beth Gardner, National Immunization Program, CDC, 1600 Clifton Road, NE, MS–E05, Atlanta, GA 30333, Telephone 404.639.6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 26, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–12566 Filed 6–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

Privacy Act of 1974; Amended System of Records

AGENCY: Office of Child Support Enforcement, ACF, HHS.

ACTION: Notice of amended system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Child Support Enforcement (OCSE) is publishing notice of its amendment of its systems of records entitled "The Location and Collection System", No. 09–90–0074.

DATES: HHS invites interested parties to submit comments on the proposed notice by July 6, 2004. As required by the Privacy Act (5 U.S.C. 552a(r)), HHS on May 25, 2004 sent a report of an Amended System to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget. The amendments described in this notice are effective upon publication unless HHS receives comments that would result in a contrary determination.

ADDRESSES: Please address comments to: Donna Bonar, Associate Commissioner, Office of Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 2nd Floor West, Washington, DC 20447, (202) 401–9271.

Comments received will be available for inspection at the address specified above from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donna Bonar, Director, Division of Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447, (202) 401–9271.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Child Support Enforcement (OCSE) is amending one of its Systems of Records, "The Location and Collection System of Records" (LCS), No. 09–90–0074, last published at 65 FR 57817 on September 26, 2000.

First, consistent with sections 453(j)(7) of the Social Security Act (the Act) as amended by Pub. L. 108–199, the National Directory of New Hires (NDNH) will be used by the Department of Housing and Urban Development for the purpose of verifying the employment and income of individuals receiving benefits under certain enumerated programs, and, after removal of personal identifiers, to conduct analysis of the employment and income reporting of these individuals. Second, we have added a routine use to clarify that OCSE shares information with private individuals and companies who are under contract with OCSE for the purpose of operating the Location and Collection System.

Dated: May 25, 2004.

Sherri Z. Heller,

Commissioner.

09–90–0074

SYSTEM NAME:

Location and Collection System of Records, HHS, OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., 2nd Floor West, Washington, DC 20447; Social Security Administration, 6200 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained to locate individuals for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders, and may include (1) information on, or facilitate the discovery of, or the location of any individuals: (A) Who are under an obligation to pay child support or provide child custody or visitation rights; (B) against whom such an obligation is sought; (C) to whom such an obligation is owed including the individual's Social Security number (or numbers) (SSN), most recent address, and the name, address, and employer identification number of the individual's employer; and (D) who have or may have parental rights with respect to a child; (2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to enrollment in group health care coverage); (3) information on the type, status, and amount of any assets or debts owed to or by such an individual; and (4) information on certain Federal disbursements payable to a delinquent obligor which may be

offset for the purpose of collecting past-due child support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specific records retained in the LCS system are: The name of noncustodial or custodial parent or child, Social Security number (when available), date of birth, place of birth, sex code, State case identification number, local identification number (State use only), State or locality originating request, date of origination, type of case (Temporary Aid to Needy Families (TANF), non-TANF full-service, non-TANF locate only, parental kidnapping); home address, mailing address, type of employment, work location, annual salary, pay rate, quarterly wages, medical coverage, benefit amounts, type of military service (Army, Navy, Marines, Air Force, not in service), retired military (yes or no), Federal employee (yes or no), recent employer's address, known alias (last name only), date requests sent to State and Federal agencies or departments (SSA, Treasury, DoD/OPM, VA, USPS, FBI, and SESAs), dates of Federal agencies' or departments' responses, date of death, record identifier; employee's SSN, SSN verification indicator and any corrected SSN, employee first name, middle name, last name, employee address(es), date of birth (optional), employee date of hire (optional), employee State of hire, wage amount, quarter paid, reporting period; employer name, Federal Employer Identification Number or Federal Information Processing System (FIPS) Code, State Employee Identification Number of FIPS Code, employer address, employer foreign address, employer optional address, and employer optional foreign address; multistate employer name, address and Federal Identification Number; employee SSN, employee first name, middle name, last name, employee address(es), date of birth (optional), date of hire (optional), State of hire (optional), employee wage amount, quarter paid, reporting period; unemployment insurance record identifier, claimant SSN, SSN verification indicator and any corrected SSN; claimant first name, middle name, claimant address, SSA/VA benefit amount, unemployment insurance benefits amount, reporting period, quarter paid, payer State, date report processed; State code, local code, case number, arrearage amount, collection amount, adjustment amount, return indicator, transfer State, street address, city and State, zip code, zip code 4, total debt, number of adjustments, number of collections, net amount, adjustment year, tax period for offset, type of offset, offset amount, submitting State FIPS, locate code, case ID number, case type, and court/administrative order indicator. Records used to aid State Child Support Enforcement agencies in obtaining information from multistate financial institutions may include institution name(s), name control, Taxpayer Identification Number(s), year, month, service bureau indicator, transfer agent indicator, foreign corporation indicator, reporting agent/transmitter, address(es), file indicator, record type, payee last name control, SSN(s), payee account number, account full legal title (optional), payee foreign country indicator (optional), payee names, addresses, account balances (optional), trust fund indicator, account balance indicator (optional), account update indicator, account type, date of birth. Individuals will be fully informed of the uses and disclosures of their records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for maintenance of the system is contained in sections 452 and 453 of the Social Security Act that require the Secretary of the Department of Health and Human Services to establish and conduct the Federal Parent Locator Service, a computerized national location network which provides location and asset information, including addresses and social security numbers to authorized persons, primarily for the purposes of establishing and collecting child support obligations.

PURPOSES:

The primary purpose of the Location and Collection System is to improve States' abilities to locate parents and collect child support.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The routine uses of records maintained in the LCS are as follows: (1) Request the most recent home and employment addresses and SSN of the noncustodial or custodial parents from any State or Federal government department, agency or instrumentality which might have such information in its records; (2) provide the most recent home and employment addresses and SSN to State Child Support Enforcement (CSE) agencies under agreements covered by section 463 of the Act (42 U.S.C. 663) for the purpose of locating noncustodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; (3) provide the most recent home and employment addresses and SSN to agents and attorneys of the United States, involved in activities in States which do not have agreements under section 463 of the Act for purposes of locating noncustodial parents or children in connection with Federal investigations, enforcement proceedings or prosecutions involving the unlawful taking or restraint of children; (4) provide to the State Department the name and SSN of noncustodial parents in international child support cases, and in cases involving the Hague Convention on the Civil Aspects of International Child Abduction; (5) provide to State agencies data in the NDNH portion of this system for the purpose of administering the Child Support Enforcement program and the Temporary Assistance for Needy Families (TANF) program; (6) provide to the Commissioner of Social Security information for the purposes of verifying reported SSNs, verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program, and for other purposes; (7) provide to the Secretary of the Treasury information in the NDNH portion of this system for purposes of administering advance payments of the earned income tax credit and verifying a claim with respect to employment in a tax return; (8) provide to researchers new hire data for research efforts that would contribute to the TANF and CSE programs. Information disclosed may not contain personal identifiers; (9) provide to State CSE agencies, or any agent of an agency that is under contract with the State CSE agency, information which will assist in locating individuals for the purposes of establishing paternity and for establishing, modifying, and enforcing child support obligations; (10) disclose to authorized persons as defined in section 463(d)(2) of the Act (42 U.S.C. 663(d)(2)) records for the purpose of locating individuals and enforcing child custody and visitation orders; (11) disclose to the State agency administering the Medicaid, Unemployment Compensation, Food Stamp, Supplemental Security Income (SSI) and territorial cash assistance programs new hire information for income eligibility verification; (12) disclose to State agencies administering unemployment and worker's compensation programs new hire information to assist in determining the allowability of claims; (13) disclose

information to the Treasury Department in order to collect past due child support obligation via offset of tax refunds and certain Federal payments such as: Federal salary, wage and retirement payments; vendor payments; expense reimbursement payments, and travel payments; (14) disclose to the Secretary of State information necessary to revoke, restrict, or deny a passport to any person certified by State CSE agencies as owing a child support arrearage in an amount specified in section 452(k) of the Act; and (15) disclose to States information pertaining to multistate financial institutions which has been provided by such institutions in order to aid State CSE agencies; (16) disclose to the Department of Education information in the NDNH portion of this system for purposes of enforcing obligations on loans under title IV of the Higher Education Act of 1965 that are in default or for collecting overpayments of grants awarded under this Act; (17) Disclose to the Department of Housing and Urban Development information in the NDNH portion of this system for purposes of verifying employment and income of individuals participating in specified programs and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of these individuals; and (18) Disclose information to private individuals or companies under contract with OCSE for the purpose of maintaining the LCS.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Location and Collection System records are maintained on disc and computer tape, and hard copy.

RETRIEVABILITY:

System records can be accessed by either a State assigned case identification number or Social Security Number.

SAFEGUARDS:

1. Authorized Users: All requests from the State IV–D Agency must certify that: (1) They are being made to locate noncustodial and custodial parents for the purpose of establishing paternity or securing child support, or in cases involving parental kidnapping or child custody and visitation determinations and for no other purpose; (2) the State IV–D agency has in effect protective measures to safeguard the personal information being transferred and received from the Federal Parent Locator Service; and (3) the State IV–D Agency will use or disclose this information for the purposes prescribed in 45 CFR 303.70.

2. Physical Safeguards: For computerized records electronically transmitted between Central Office and field office locations (including organizations administering HHS programs under contractual agreements), safeguards include a lock/unlock password system. All input documents will be inventoried and accounted for. All inputs and outputs will be stored in a locked receptacle in a locked room. All outputs will be labeled "For Official Use Only" and treated accordingly.

3. Procedural and Technical Safeguards: All Federal and State personnel and contractors are required to take a nondisclosure oath. A password is required to access the terminal. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties. These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," and the Department's Automated Information System Security Program Handbook.

RETENTION AND DISPOSAL:

Quarterly wage data and unemployment data supplied to the LCS which, within 12 months, has not produced a match as a result of any information comparison will not thereafter be used for child support enforcement purposes. Quarterly wages and unemployment data and new hire information will be deleted from the database 24 months after the date of entry. An information comparison will be retained for 24 months. Sample data will be retained only long enough to complete research authorized under section 453(j)(5) of the Act. Tax refund and administrative offset information will be maintained for six years in an active master file for purposes of collection and adjustment. After this time, records of cases for which there was no collection will be destroyed. Records of cases with a collection will be stored on-line in an inactive master file. Records pertaining to passport denial will be updated and/or deleted as obligors meet satisfactory restitution or other State approved arrangements. Records of information provided to authorized users will be maintained only long enough to communicate the information to the appropriate State or Federal agent. Thereafter, the information provided will be destroyed. However, records pertaining to the disclosures, which include information provided by States, Federal agencies contacted, and an indication of the type(s) of information returned, will be stored on a history tape and in hard copy for five years and then destroyed. Records of information provided by financial institutions for the purpose of facilitating matches will be maintained only long enough to communicate the information to the appropriate State agent. Thereafter, the information provided will be destroyed. However, records pertaining to the disclosures, which include information provided by States, Federal agencies contacted, and an indication of the type(s) of information returned, will be stored on a history tape and in hard copy for five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner for Automation and Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 2nd Floor West, Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the Systems Manager at the address listed above. The Privacy Act provides that, except under certain conditions specified in the law, only the subject of the records may have access to them. All requests must be submitted in the following manner: identify the system of records you wish to have searched, have your request notarized to verify your identity, indicate that you are aware that the knowing and willful request for or acquisition of a Privacy Act record under false pretenses is a criminal offense subject to a $10,000 fine. Your letter must also provide sufficient particulars to enable OCSE to distinguish between records on subject individuals with the same name.

RECORD ACCESS PROCEDURES:

Write to the Systems Manager specified above to attain access to records. Requesters should provide a detailed description of the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under System Manager above, and identify the record and specify the information to be contested and corrective action sought with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any State and from multi-state financial institutions.

ITEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 04–12506 Filed 6–2–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0246]

Agency Emergency Processing Under OMB Review; Experimental Study of Petitioned Health Claims on Glucosamine and Chondroitin Sulfate

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 emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information is in response to a petition for health claims for glucosamine and chondroitin sulfate. The study examines various petitioned health claims about the effect of glucosamine and chondroitin sulfate on osteoarthritis. The goal of the study is to determine if certain claims about glucosamine and/or chondroitin (the "product") and the reduction of risk of specific outcomes related to osteoarthritis, namely joint degradation and cartilage deterioration, create misperceptions on the part of consumers about the intended use of the product.

DATES: Fax written comments on the collection of information by July 6, 2004. FDA is requesting approval of this emergency processing by July 6, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA is requesting emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). The information is critical to the agency's mission of regulating health claims on dietary supplements. FDA has received petitions for new health claims for glucosamine and chondroitin sulfate. Unlike traditional health claims that promote the ability of a product to reduce the risk of a particular disease, the petitioned claims promote the ability of the product to reduce the risk of a specific health outcome without mention of an associated disease.

Traditionally, a health claim states how a product will reduce the risk of contracting a particular disease. An example of this type of claim would include "Eating a diet rich in fruits and vegetables may reduce the risk of cancer." Here, the statement clearly defines the product (fruits and vegetables), its risk-reducing effect, and the disease upon which it may be effective (cancer). The petitioned claims, however, do not employ the standard structure as traditional health claims.

The petitioned claims are designed as health claims, in that they promote the risk reducing effect of glucosamine and chondroitin sulfate. The claims neglect, however, to mention the specific disease risk, or the risk of osteoarthritis, that the product intends to reduce. Instead, the claims mention symptoms, modifiable risk factors, and surrogate endpoints of the disease. An example of these claims is "Glucosamine and chondroitin sulfate may reduce the risk of joint degradation." The petitioned claims to be examined resemble health claims by their use of language concerning the reduction of risk. Yet they employ terminology suggestive of modifiable risk factors of the disease, which are elements not traditionally found in health claims. It is not clear how consumers will interpret these claims. The agency is concerned that the label language may cause consumers to interpret the claims in such a way that would suggest it has an effect on the disease or condition other than risk reduction.

Consumer research is needed to test consumer's perceptions of claims that promote risk reduction of contracting a symptom or a modifiable risk factor for a disease. Despite the verbiage within the claim about risk reduction, the presence of health conditions without mention of a disease may cause consumers to believe that the product will treat the health condition rather than reduce risk. If consumers disregard language concerning the reduction of risk and interpret the claim as one that promotes a treatment effect, then the claim language has created a misperception on the part of the consumer. The result is that consumer's interpret the claim as a treatment claim rather than a health claim.

FDA invites comments on: (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.

Experimental Study of Petitioned Health Claims on Glucosamine and Chondroitin Sulfate

FDA is requesting OMB approval of an experimental study of petitioned health claims on glucosamine and chondroitin sulfate. The study examines various petitioned health claims about the effect of glucosamine and chondroitin sulfate on osteoarthritis. The goal of the study is to determine if certain claims about glucosamine/chondroitin (the "product") and the reduction of risk of specific outcomes related to osteoarthritis, namely joint degradation and cartilage deterioration, create misperceptions on the part of consumers about the intended use of the product. Results of the study will inform the Center for Food Safety and Applied Nutrition decision making process, particularly as it concerns the approval of the use of these claims. The results may also assist in future decisions toward other claims that bear similar characteristics.

The need for consumer research on various dietary supplement claims arises over a concern that consumer's may misinterpret or misperceive a health claim as a treatment claim when the claim does not clearly refer to a specific disease. Traditional health claims for dietary supplements promote the ability of a product to reduce the risk of a particular disease. However, new claims about products promote the ability of a product to reduce the risk of

a specific health outcome without mention of an associated disease. If the specific health outcome is mentioned without a disease, consumers may misunderstand the claim as one that promotes the product's ability to treat, and not reduce the risk of contracting, a particular health outcome.

The larger question of whether or not a consumer interprets a claim as a drug treatment claim or as a health claim will be answered by comparing the effect of various label claim language on a consumer's perceptions of the effect and potency of a product, and the time in which the product will be effective. This is accomplished by answering a number of smaller research questions about claims concerning glucosamine/chondroitin and their relationship to claims that could be made about food products, as well as their relationship to claims that could be made about an over-the-counter (OTC) or pharmaceutical drug.

The working hypothesis underlying the study design is that consumer's perceive dietary supplements as less potent, less effective, and therefore having a weaker effect on a health condition than drugs. A parallel hypothesis is that consumer's perceive dietary supplements as more potent, more effective, and therefore having a stronger impact on a health condition as food. The study is designed to assess the relative position of a dietary supplement product, "DS", with respect to a food and a drug along three dimensions characterizing the impact of the DS. These three dimensions include the type of effect the consumer believes the DS will have on a health condition, and the perceived effectiveness of the substance at achieving the claimed effect, and the time in which the consumer believes the effect will occur. The study will also assess how various types of claims on food products, drugs, and dietary supplements change how consumers perceive the relative position of these products with each other. The study will determine if the presence of a petitioned claim on the product label causes consumers to perceive the product as more treatment-like in its effect than when an approved health claim is present.

FDA will conduct an experimental study using subjects recruited from an internet panel of 500,000 households. The internet panel methodology allows controlled presentation of visual materials, experimental manipulation of study materials, and the random assignment of participants to experimental conditions. The experimental manipulation of label conditions and random assignment to conditions allows for statistical estimates of the effects of different approaches to conveying information intended by the health claims. Random assignment ensures that mean differences between conditions can be tested using established techniques such as analysis of variance and multiple regression analysis to yield statistically valid estimates of effect size.

The study design is based on the controlled presentation of realistic product labels that carry health claims for glucosamine/chondroitin, as well as a food product and an OTC drug product. The various health claims that are tested vary in terms of the use of language concerning treatment or risk-reduction effects, and the use of terminology related to a disease or a symptom or risk factor of a disease. In addition, on some labels a disclaimer accompanies the claims. A number of labels will carry claims about the product's effect on a specific disease (osteoarthritis) and will serve as control conditions that assess how consumers view the product when the claims mention only symptoms of the disease.

Panel members are recruited by a variety of means designed to reflect all segments of the population. They are required to have a computer with Internet access. Typical panel members receive three or four invitations per month to participate in research projects. Incentives of small monetary value are given to panel members for their participation periodically.

Each participant in the study will examine one of the label products described earlier. The product may be a food, drug, glucosamine, chondroitin sulfate, or glucosamine/chondroitin combination. The study may also include an additional dietary supplement for comparison with the glucosamine and chondroitin product. The label will have a claim about the products effect on the reduction of risk of either osteoarthritis, joint degradation, or cartilage deterioration. The subject will answer a short set of questions related to each of the label products that they have been shown. These questions will pertain to the consumer's perception of the effect (treat/reduce risk) of the product, the relative effectiveness of the product, and the time in which the effect occurs (hours versus years).

The study includes three conditions, representing important types of label claims and label users that constitute benchmarks for assessing the direction and magnitude of effects due to the presence of symptom-like health conditions: (1) A control that is an approved or traditionally worded health claim, i.e., one that mentions risk reduction of a specific disease; (2) a petitioned health claim that mentions a symptom-like condition, but not the disease; and (3) a petitioned health claim with a disclaimer that states that the product is not intended to cure or treat a disease. The key measures for this study are the perceived effects of the product conveyed by the label condition, the effectiveness of the product, and the expected timeframe within which the product is expected to be effective.

FDA will use the information from this study to guide the decision making process concerning current and future petitions for health claims. The agency acknowledges the lack of empirical data about how consumers understand and respond to statements they see in product labeling. The information gathered in this study can be used by the agency to assess likely consumer responses to various options for qualifying health claims based on varied levels of scientific evidence.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1,560	1	1,560	0.16	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The approaches and wording options for qualified health claims of central interest to the agency requires a complex experimental design. To ensure adequate power to identify differences, the minimum cell size is 60

participants. This will be sufficient to identify small to medium effects (i.e., r =.15 to .30) for all main effects and first order interactions with power = (1-beta), well in excess of .80 at the .05 significance level.

Dated: May 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–12532 Filed 6–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0251]

Draft Guidance for Industry, Food and Drug Administration Staff, and Food and Drug Administration-Accredited Third-Parties: Requests for Inspection by an Accredited Person Under the Inspections by Accredited Persons Program Authorized by the Medical Device User Fee and Modernization Act of 2002; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Requests for Inspection by an Accredited Person Under the Inspections by Accredited Persons Program Authorized by Section 201 of the Medical Device User Fee and Modernization Act of 2002." Section 201 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) authorizes FDA-accredited third parties (accredited persons or APs) to conduct inspections of manufacturers of class II and class III devices who meet certain eligibility criteria as defined by the statute. This draft guidance document describes the establishment eligibility criteria and the process for establishments to follow when requesting FDA's approval to have an AP conduct an inspection of their establishment instead of FDA under the new inspections by accredited persons program (AP program).

DATES: Submit written or electronic comments on this draft guidance by September 1 2004. Submit comments on the collection of information by August 2, 2004.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled "Requests for Inspection Under the Inspection by Accredited Persons Program Authorized by Section 201 of the Medical Device User Fee and Modernization Act of 2002" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on the guidance and collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance and collection of information to: *http://www.fda.gov/dockets/ecomments.* Identify all comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For medical device issues: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Road, Rockville, MD 20850 301–594–4692

For biologics issues: Carol Rehkopf, Center for Biologics Evaluation and Research (HFM–650) Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852 301–827–6202

SUPPLEMENTARY INFORMATION:

I. Background

MDUFMA (Public Law 107–250) added a provision in section 704(g) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 374(g)) to permit third-party inspections of eligible establishments who market class II or class III devices in the United States and who also market or plan to market such devices in foreign countries. The new law also defines the qualifying criteria that a manufacturer must meet in order to participate in the AP program (section 704(g)(6)(A) of the act). This guidance will help manufacturers determine whether they are eligible to participate in this inspectional program and identifies the information manufacturers should submit to the agency when requesting permission to use an AP.

The AP program generally enables manufactures to better manage their inspection schedules since they will schedule the AP inspections themselves, provided FDA has approved their request to use an AP. Eligible firms, however, remain subject to inspections by FDA (section 704(g)(9) of the act). The program is voluntary; no manufacturer is required to participate, whether domestic or foreign.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on inspection requests under the AP program authorized by section 201 of MDUFMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested parties may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

To receive "Requests for Inspection under the Inspection by Accredited Persons Program Authorized by Section 201 of the Medical Device User Fee and Modernization Act of 2002" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1532 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared submissions, approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic

submissions, Mammography Matters, and other device-oriented information. The CDRH Internet may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

V. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (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, 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.

Title: Requests for Inspection under the Inspection by Accredited Persons Program

Description: Section 201 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250) amends section 704 of the Federal Food, Drug, and Cosmetic Act (the act) by adding paragraph (g). This amendment authorizes FDA to establish a voluntary third party inspection program applicable to manufacturers of class II or class III medical devices who meet certain eligibility criteria. Under this new Inspection by Accredited Persons Program (AP program), such manufacturers may elect to have third parties that have been accredited by FDA (accredited person or AP) conduct some of their inspections instead of FDA.

The AP program applies to manufacturers who currently market their medical devices in the United States and who also market or plan to market their devices in foreign countries. Such manufacturers may need current inspections of their establishments to operate in global commerce.

The applicant must submit the following information in support of a request for approval to use an AP:

1. Information that shows that the applicant "manufactures, prepares, propagates, compounds, or processes" class II or class III medical devices.

2. Information that shows that the applicant markets at least one of the devices in the United States.

3. Information that shows that the applicant markets or intends to market at least one of the devices in one or more foreign countries and one or both of the following two conditions are met as follows:

a. One of the foreign countries certifies, accredits, or otherwise recognizes the AP the applicant has selected as a person authorized to conduct inspections of device establishments, or

b. A statement that the law of a country where the applicant markets or intends to market the device recognizes an inspection by the FDA or by the AP.

4. Information that shows that the applicant's most recent inspection performed by FDA, or by an AP under this program, was classified by FDA as either "No Action Indicated (NAI)" or "Voluntary Action Indicated (VAI)"; and

5. A notice to FDA requesting clearance (approval) to use an AP, and identifying the AP the applicant selected.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100	1	100	15	1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

There are approximately 8,000 foreign and 10,000 domestic manufacturers of medical devices. Approximately 5,000 of these firms only manufacture class I devices and are, therefore, not eligible for the AP program. In addition, 40 percent of the domestic firms do not export devices and therefore are not eligible for the AP program. Also 10 to 15 percent of the firms are not eligible due to the results of their previous inspection. FDA estimates that there are 4,000 domestic manufacturers and 4,000 foreign manufacturers that are eligible for inclusion in the AP program. Based on informal communications with industry, FDA estimates that approximately 100 of these manufacturers may apply to use an AP in any given year.

Dated: May 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–12683 Filed 6–1–04; 11:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs

Regulations (19 CFR 111.51), the following Customs broker license are canceled without prejudice.

Name	License #	Issuing port
Paul T. Kimoto	04831	Honolulu.
Air Express International Agency, Inc	3024 & 03016	New York.
Columbia Shipping Inc.	12259	San Francisco.
Dateline Forwarding Services Inc.	13276	Atlanta.
Jacky Maeder, Ltd.	10446	San Francisco.
Celadon-Jacky Maeder Co.,	14412	San Francisco.

Dated: May 26, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–12534 Filed 6–2–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOME LAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Comment Request

ACTION: Request OMB approval; exemption from NSEERS registration requirements (File No. OMB–40).

The Department of Homeland Security, Immigration and Customs Enforcement (ICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 28, 2003 at 68 FR 66846, allowing for a 60-day public comment period. No comments were received by the ICE on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 6, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget Room 10235, Washington, DC 20503; telephone 202–395–7316. The Office of Management and Budget is particularly interested in comments which:

(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) *Title of the Form/Collection:* Exemption from NSEERS Registration Requirements.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number. File No. OMB–40. U.S., Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information collection allows an alien to seek an exemption from the NSEERS registration requirements by submitting a letter to the Department of Homeland Security containing specific information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,800 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,900 annual burden hours.

If additional information is required contact: Mr. Richard A. Sloan, Director, Regulations and Forms Services, Citizenship and Immigration Services, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536.

Dated: May 28, 2004.

Stephen Tarragon,

Senior Management Analyst.

[FR Doc. 04–12545 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–37]

Notice of Submission of Proposed Information Collection to OMB; PHA Development Cost Budget, Cost Statement, Actual Development Cost Certificate

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting extension of OMB approval to collect information from Public Housing Agencies (PHAs) c Public Housing Agencies (PHAS) documenting budgets and costs for the development of low-income housing and for the costs of acquisition and relocation.

DATES: *Comments Due Date:* July 6, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0036) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a

toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: PHA Development Cost Budget, Cost Statement, Actual Development Cost Certificate.

OMB Approval Number: 2577–0036.

Form Numbers: HUD–52427, HUD–52484.

Description of the Need for the Information and Its Proposed Use: HUD requires information on the Cost Budget/Statement to determine whether PHA expenditures or requests for funds are reasonable in relation to the stage of development. PHAs submit the Actual Development Cost Certificate to notify HUD that all development work has been completed, and to report the amount for all costs relating to development. Acquisition and relocation reports enable HUD to determine PHA compliance with acquisition and relocation requirements.

Frequency of Submission: Quarterly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	620	1,852		4.8		8,905

Total Estimated Burden Hours: 8,905.

Status: Request for extension of an existing information collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 27, 2004.

Wayne Eddins,

Departmental PRA Compliance Officer, Office of the Chief Information Officer.

[FR Doc. 04–12496 Filed 6–2–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension of a currently approved collection (OMB # 1024–0021). Comments are invited on: (1) The need for the information being collected, including whether the information has practical utility; (2) the validity and accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS requests comments on an application form that allows the Park Programs Division of National Capital Parks-Central to process requests from individuals and organizations to hold public gatherings on NPS property. These public gatherings consist of special events and demonstrations that the NPS is charged with regulating to insure protection of cultural and natural resources within NPS property. The NPS will use the information you submit to determine whether or not to make modifications to the application form. Once the NPS makes any modifications that it may decide to adopt, the NPS plans to submit a proposed collection of information package to OMB with a request that OMB approve the package and reinstate the OMB clearance number. You may obtain copies of the application from the source listed below (see the **ADDRESSES** section).

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted on or before July 6, 2004.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0021), Office of Information and Regulatory Affairs, OMB, by fax at (202) 395–6566, or by electronic mail at *oira_docket@omb.eop.gov.* You may also mail or hand carry a copy of your comments to Kym Elder, national Capital Region, 1100 Ohio Drive, Room 240, SW., Washington, DC 20242, or by fax at (202) 619–7244, or by electronic mail at *kym_elder@nps.gov.*

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However; we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

To request printed copies of the documents contact: Kym Elder, National Capital Region, 1100 Ohio Dr., Room 240, SW., Washington, DC 20242, via phone at (202) 619–7246, via fax at (202) 619–7244, or via e-mail at *kym_elder@npg.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Park Service, National Capital Region Application for a Permit

to Conduct a Demonstration or Special Event in Park Areas and a Waiver of Numerical Limitations on Demonstrations for White House Sidewalk and/or Lafayette Park.

Departmental Form Number: None.

OMB Number: 1024–0021.

Expiration Date: 4/30/04.

Type of Request: Extension of a currently approved collection.

Description of Need: The information collection responds to the statutory requirement that the NPS preserve park resources and regulate the use of units of the National Park System. The Information to be collected identifies: (1) Those individuals and/or organizations that wish to conduct a public gathering on NPS property in the National Capital Region, (2) the logistics of a proposed demonstration or special event that aid the NPS in the regulating activities to insure that they are consistent with NPS mission, (3) potential civil disobedience and traffic control issues for the assignment of the United States Park Police personnel, (4) circumstances which may warrant a bond to be assigned to the event for the purpose of covering potential cost to repair damage caused by the event.

Description of Respondents: Respondents are those individuals or organizations that wish to conduct a special event or demonstration on NPS property within the National Capital Region.

Estimated average number of annual respondents: 4200.

Estimated average burden hours per response: .5 hour.

Estimated annual reporting burden: 2100 hours.

Dated: April 22, 2004.

Leonard E. Sterne,

National Park Service Information and Collection Clearance Officer.

[FR Doc. 04–12592 Filed 6–2–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection; Request for Extension

AGENCY: National Park Service, Interior.

ACTION: Notice of submission to the Office of Management and Budget of a request for extension of a currently approved information collection, and request for public comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) requests public comments on its request for an extension of a currently approved information collection (OMB Control # 1024–0233) for NPS Leasing Regulations at 36 CFR part 18, concerning the leasing of historic properties as authorized by law.

DATES: The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 6, 2004 in order to be assured of consideration.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, OMB, by fax at (202) 395–6566, or via e-mail at *OIRA_DOCKET@omb.eop.gov.* Please also mail or hand carry a copy of your comments to Anthony Sisto, Concession Program Manager, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, or by e-mail to *Tony_Sisto@nps.gov.* Copies of the full Information Collection Request can be obtained from Erica Smith-Chavis at National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, or by phone at (202) 513–7144, or by e-mail at *Erica_Smith@nps.gov.*

SUPPLEMENTARY INFORMATION:

Title: NPS Leasing Program—36 CFR part 18.

OMB Control Number: 1024–0233.

Expiration Date of Approval: April 30, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: The Office of Management and Budget (OMB) regulations which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). NPS has submitted a request to OMB to renew approval of the collection of information in 36 CFR part 18 regarding the NPS Leasing Program. NPS is requesting a 3-year extension of the OMB approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1024–0233.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on January 22, 2004 (Pages 3171–3172). No comments were received. This notice provides the public with an additional 30 days in which to comment. The information is being collected to meet the requirements of section 802 of the National Parks Omnibus Management Act of 1998, concerning the legislative authority, policies, and requirements for the solicitation, award, and administration of National Park Service leases for property located within areas of the national park system.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Persons or entities seeking a leasing opportunity with the National Park Service.

Total Annual Responses: 627.

Estimated Average Burden Hours Per Response: 7.

Total Annual Burden Hours: 4,392.

We specifically request your comments on (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. Please refer to OMB control number 1024–0233 in all correspondence.

All comments will become a matter of public record. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 23, 2004.

Leonard E. Sterne,

NPS Information Collection Clearance Officer, Acting Washington Administrative Program Center.

[FR Doc. 04–12593 Filed 6–2–04; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Federal Register Notice of Submission to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of submission to the Office of Management and Budget and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(a)(1)(D) and 5 CFR part 1320), the National Park Service (NPS) invites comments on a request submitted to the Office of Management and Budget (OMB) to approve a revision of a currently approved information collection clearance (OMB No. 1024–0236) containing three revised forms in the NP's revised automated Research Permit and Reporting System. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the park protection functions of the NPS, including whether the information has practical utitlity; (2) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated, electronic, mechanical or other forms of information technology.

OMB has up to 60 days to approve or disapprove the requested information collection budget but may respond after 30 days. Thus, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Primary Purpose of the Proposed Information Collection Request: The NPS requires information from applicants wishing to conduct natural or social science research or studies or science education activities in parks for two reasons. The first is to ensure that scientific research and collecting studies or science education activities permitted in parks in response to an application do not unacceptably impact park resources and other uses of parks. The second is to ensure that applicants who receive permits submit annual research progress and other reports to the NPS. These reports inform NPS about the permittees' scientific findings in the parks and provide NPS with information NPS uses for monitoring the use of parks for scientific research and collecting studies and science education activities.

The automated NPS Research Permit and Reporting System Web site (*http://science.nature.nps.gov/research*) provides access to the current information collection and status reporting system that underlies this extension request.

Response to 60-Day Notice: On December 5, 2003, NPS published a notice in the **Federal Register** to request comments on the proposal to extend and modify two existing NPS information collection instruments that are processed by the existing, Internet-based Research Permit and Reporting System (*see* 68 FR: 68110–68111). NPS received no responses from the public. NPS subsequently contacted two potential reviewers by e-mail, one of whom had commented in response to a similar **Federal Register** notice in 1999. The previous commenter did not respond to the e-mail request. The other e-mail recipient responded to a different part of the e-mail of contact and did not directly respond to the opportunity to comment on the **Federal Register** notice. NPS and researcher use of the Internet-based system over the past three years has yielded few complaints and has earned a number of kudos. This use also has yielded suggestions from both respondents and government employees for making the information collection forms or software more efficient or more usable. Many of these suggestions were considered by two NPS working groups (November 2002; September 2003). The working group deliberations led to appropriate modifications being incorporated through ongoing software improvements, through release of a second version of the software in December 2003, and through the changes to the collection of information forms proposed as part of this renewal request. Such receipt of, and action on, user suggestions constitutes ongoing consultation with people from whom information is being collected and by whom collected information is being applied. Should OMB approve the revised collection of information forms submitted in this extension request, additional software changes will be made to incorporate the improvements contained in these revised forms.

DATES: Public comments on this notice must be received by July 6, 2004.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of Interior (OMB No. 1024–0236), Office of Information and Regulatory Affairs, OMB, by fax at 202–395–6566 or by electronic mail at *oira_docket@omb.eop.gov*. Please also mail or hand carry a copy of your comments to Dr. John G. Dennis, Natural Resources (MIB 3127), National Park Service, 1849 C Street, NW., Washington, DC 20240; via fax at (202)–371–2131; or via electronic mail at *WASO_NRSS_researchcoll@nps.gov*.

If you comment via electronic mail, please submit your comments as an attached ASCII or MSWord file and avoid the use of special characters and any form of encryption. Please also include "Attn: NPS Research Permit and Reporting System" and your name and return address in your email message. If you would like, but do not receive, a confirmation from the system that we have received your email message, contact us directly at the phone number given here.

All comments will become a matter of public record. Our practice is to make comments, including respondent names and addresses (business or home, whatever we receive), available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. We will not consider anonymous comments.

Copies of the information collection request may be obtained by contacting John Dennis at the above noted electronic mail address or by telephone at (202) 513–7174.

SUPPLEMENTARY INFORMATION:

Title: NPS Research and Reporting System Collection of Information.

Form: The collection of information contains three automated NPS forms: Application for a Scientific Research and Collecting Permit (Form 10-741a); Application for a Science Education Permit (Form 10–741b), Investigator's Annual Report (Form 10–226).

OMB Number: 1024–0236.

Expiration Date: April 30, 2004.

Type of Request: Revision of a currently approved collection of information.

Description of Need: The NPS regulates scientific research and

collecting studies and science education activities inside park boundaries under regulations codified at 36 CFR part 2, section 2.5. The NPS issued these regulations pursuant to authority under the NPS Organic Act of 1916 as amended (16 U.S.C. 1 *et seq.*). The NPS administers these regulations to provide for scientific research and collecting and scientific education uses of parks while also protecting park resources and other park uses from adverse impacts that could occur if inappropriate scientific research and collecting studies or science education activities were to be conducted within park boundaries.

Respondents: Individual scientific investigators or science educators from other governmental agencies, universities and colleges, schools, research organizations, and science education organizations who apply for a permit and any members of this group who receive a permit and then must submit the required annual report of accomplishment.

Estimated Number of Respondents: 3,000 per year.

Estimated Number of Responses per Respondent: Two responses per year per respondent for an annual total of 6,000 responses. For each permit cycle, each respondent will respond usually once to prepare and submit the application for a permit and respondents who are successful in being issued a permit will respond a second time to submit the required Investigator's Annual Report. Given that most applicants are successful in being issued a permit and that permit renewal usually occurs annually, the number of responses will approach a total that is two times the number of respondents.

Estimate of Burden Per Respondent: NPS estimates the reporting burden for this collection of information, including both the relevant application and the annual report, will average slightly more than 1.6 hours per respondent per year.

Estimated Total Annual Burden: 4,875 hours. This number assumes 3,000 respondents each take about 0.75 hours to complete the automated application form (including reading the guidance material), up to 3,000 successful applicants each take 0.25 hours to sign the issued permit and return it to the park, and up to 3,000 permittees each take 0.25 hours to complete the automated Investigator's Annual Report form, including reading the instructions. In addition, this number includes 0.25 hours each for approximately 1,500 respondents to copy and process documents that can not be submitted electronically, and 0.5 hours each for up to 1,500 respondents to prepare the portion of the Application for a Scientific Research and Collecting Permit that requires coordination with one or more non-NPS museums or other specimen repositories. Those few applicants who will be unable to process their applications and report forms electronically likely will spend a longer amount of time completing each form manually.

Methodology and Assumptions Underlying the Hour Estimate: Depending on complexity of the investigator's project, a complete Application for a Scientific Research and Collecting Permit consists of two or more electronic pages plus electronic or paper attachments of copies of existing materials. These copies of existing materials may include: (1) The research proposal the applicant prepared to secure funding for the applicant's project, (2) peer reviews that the applicant may have obtained on the research proposal during preparation of the proposal, (3) other permits the applicant may have had to obtain from other permitting organizations, and (4) other documents that may help the park receiving the application understand and evaluate the applicant's proposed activities in the park. A complete Application for a Science Education Permit consists of two electronic pages plus, if available, an electronic attachment or paper copy of an existing proposal the applicant may have prepared to secure funding or administrative approval for the applicant's science education activity. This analysis and burden hour estimate assume that, prior to preparing an application for a permit, respondents already have in hand study plans or education proposals, peer reviews as appropriate, other permits as necessary, and other supporting documents prepared for other purposes beyond what is required for either the Application for a Scientific Research and Collecting Permit or the Application for a Science Education Permit.

A complete Investigator's Annual Report consists of up to one and a half pages should the respondent completely fill the expandable portions of the electronic form. There are no attachments possible with the electronic Investigator's Annual Report form.

Estimated Non-Hour Cost Per Respondent to Comply with the Paperwork Requirements: There is no non-hour cost. There is no filing fee.

Dated: April 14, 2004.

Leonard E. Sterne,

Acting, National Park Service Information Collection Clearance Officer.

[FR Doc. 04–12594 Filed 6–2–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Petersburg National Battlefield Draft General Management Plan, Draft Environmental Impact Statement, Petersburg National Battlefield, Petersburg, VA

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of Draft General Management Plan, Draft Environmental Impact Statement (Draft GMP/EIS), for Petersburg National Battlefield, Petersburg, Virginia. The General Management Plan is being prepared in compliance with 16 U.S.C. 1a–7(b), which requires the National Park Service to prepare a general management plan for the preservation and use of each unit of the national park system.

DATES: The National Park Service will accept comments that are submitted by the public on or before July 30, 2004. Four public meetings will be held in the communities surrounding the park (City of Petersburg, VA, City of Hopewell, VA, Prince George County, VA and Dinwiddie County, VA) around the mid-point of the 60-day public review period. The times and locations of these meetings will be announced in all local newspapers, sent to all addresses on the park's Draft GMP/EIS mailing list and posted on the park's Web site at *http://www.nps.gov/pete.*

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Petersburg National Battlefield, 1539 Hickory Hill Road, Petersburg, VA 23803–4721 and via the Internet at *http://www.nps.gov/pete.* A public reading copy of the Draft GMP/EIS will be available for review at the following libraries:

Colonial Heights Public Library, 1000 Yacht Basin Drive, Colonial Heights, VA 23834.

Hopewell Public Library, Appomattox Regional Library, 245 E. Cawson St., Hopewell, VA 23860.

Petersburg Public Library, 137 S. Sycamore St., Petersburg, VA 23803.

FOR FURTHER INFORMATION CONTACT: Bob Kirby, Superintendent, Petersburg National Battlefield at (804) 732–3571 X105.

SUPPLEMENTARY INFORMATION: Petersburg National Battlefield does not currently have a General Management Plan. The park's existing Master Plan (1965) was primarily a facility development plan and all of its major recommendations have been completed. The GMP/EIS presents and analyzes four alternatives for preserving resources, enhancing interpretation, providing visitor services and working with partners. Three of these alternatives propose boundary expansion. The GMP/EIS responds to the park's mission and the challenges facing the park and adjacent communities today.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Petersburg National Battlefield, 1539 Hickory Hill Road, Petersburg, VA 23803–4721. You may also comment via the Internet *http://www.nps.gov/pete* (*see* the link) or via e-mail to *pete_gmp@nps.gov*. Please include your name and return address in your surface, Internet or e-mail message. Finally, you may hand-deliver comments to 1539 Hickory Hill Road, Petersburg, VA during regular business hours. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Bob Kirby,

Superintendent, Petersburg National Battlefield, National Park Service.

[FR Doc. 04–12595 Filed 6–2–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 1:30 p.m., June 18, 2004 at King Kamehameha Beach Hotel, Honu Room, Kailua-Kona, Hawaii. The meeting will be preceded by a park visit beginning at 9 a.m. at Hale Ho'okipa.

The agenda will include Park and Commission History, Commission Charter and Responsibilities, Park Projects Updates, and Commissions Goals and Timelines.

The meeting is open to the public. Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: April 16, 2004.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 04–12591 Filed 6–2–04; 8:45 am]

BILLING CODE 4312–6H–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 15, 2004. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 18, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Alameda County

LeConte Hall, Hearst and Gayley, Berkeley, 04000622.

Los Angeles County

General Petroleum Building, 612 S. Flower St., Los Angeles, 04000621.

Southern California Gas Company Complex, 800, 810, 820 and 830 S. Flower St., Los Angeles, 04000623.

Mendocino County

Babcock, Dr. Raymond, House, 96 S. Humboldt St., Willits, 04000620.

COLORADO

El Paso County

Evans, J.G., Barn, Hodgen Rd., Black Forest, 04000624.

DISTRICT OF COLUMBIA

District of Columbia

2nd Baptist Church, 816 3rd St. NW., Washington, 04000625.

FLORIDA

Volusia County

Stockton—Lindquist House, 244 E. Beresford Ave., DeLand, 04000626.

GEORGIA

Bibb County

Williams, Lucas, Field, 225 Willie Smokey Glover Blvd., Central City Park, Macon, 04000627.

Murray County

Murray County High School Historic District, 1004 Green St., Chatsworth, 04000628.

INDIANA

Allen County

Haynes, John and Dorothy, House, 3901 N. Washington Rd., Fort Wayne, 04000635.

Hendricks County

McClain, John W., House, 1445 S. Cty rd. 525 E, Avon, 04000633.

Marion County

Hill, John Fitch, House, 1523 Southeastern Ave., Indianapolis, 04000634.

Johnson's, Oliver, Woods Historic District, Roughly bounded by Central and College Aves., 44th and 46th Sts., Indianapolis, 04000632.

Rivoli Theater, 3155 E. 10th St., Indianapolis, 04000630.

Randolph County

Union City Public Library, 408 N. Columbia St., Union City, 04000631.

Switzerland County

Thiebaud Farmstead, 531 IN 56, Vevay, 04000629.

LOUISIANA

Jefferson Davis Parish

More Mileage Gas Station, 602 North Main, Jennings, 04000637.

Vernon Parish

Burr's Ferry Earthworks, LA 8, Leesville, 04000636.

West Baton Rouge Parish

Cohn High School, 805 N 14th St., Port Allen, 04000638.

MICHIGAN

Isabella County

Sherman City Union Church, Sherman Rd at Allen Rd., Sherman City, 04000645.

Midland County

Boonstra, Mr. and Mrs Frank, House, (Residential Architecture of Alden B. Dow in Midland, Michigan MPS AD) 1401 Helen St., Midland, 04000644.

Butenschoen, Mr. and Mrs. Louis P., House, (Residential Architecture of Alden B. Dow in Midland, Michigan MPS AD) 1212 Helen St., Midland, 04000643.

Campbell, Calvin A. and Alta Koch, House, (Residential Architecture of Alden B. Dow in Midland, Michigan MPS AD) 1210 W. Park Dr., Midland, 04000642.

Irish, Donald and Louise Clark, House, (Residential Architecture of Alden B. Dow in Midland, Michigan MPS AD) 1801 W. Sugnet Rd., Midland, 04000641.

Penhaligen, Charles and Mary Kempf, House, (Residential Architecture of Alden B. Dow in Midland, Michigan MPS AD) 1203 W. Sugnet Rd., Midland, 04000640.

Reinke, Mr. and Mrs. Robert C., House, (Residential Architecture of Alden B. Dow in Midland, Michigan MPS AD) 33 Lexington Court, Midland, 04000639.

NEW JERSEY

Essex County

Military Park Commons Historic District, Roughly bounded by Washington Pl., McCarter Hwy, E. Park St. and Raymond Blvd., Newark, 04000649.

NORTH CAROLINA

Ashe County

Elkland School Gymnasium, 10279 Three Top Rd., NC 1100 at jct. of NC 194, Todd, 04000646.

Bertie County

Bertie Memorial Hospital, 401 Sterlingworth St., Windsor, 04000647.

Lenoir County

Kinston Apartments, 1313 McAdoo St., Kinston, 04000648.

SOUTH CAROLINA

Barnwell County

Ashley—Willis House, 312 W. Main St., Williston, 04000650.

Beaufort County

Scheper, F.W., Store, 918 8th St., Port Royal, 04000652.

Charleston County

Bethel African Methodist Episcopal Church, 369 Drayton St., McClellanville, 04000651.

WISCONSIN

Fond Du Lac County

Southwest Historic District, 115 Belleville, parts of Grove, Lincoln, Newbury, Oak, Ransom, W. Sullivan, Thorne, Watertown, and Watson St., and Woodside-Ripon, 04000653.

On May 13, 2004, the following resource was removed from the National Register of Historic Places; determined eligible for the National Register of Historic Places:

CALIFORNIA

Monterey County

Monterey County Jail, 142 West Alisal Street, Salinas, 03000337.

A request for removal has been made for the following resources:

IOWA

Buchanan County

Otter Creek Bridge, (Highway Bridges of Iowa MPS), 105th St. Over Otter Cr., Hazleton vicinity 98000757.

KENTUCKY

Pendleton County

Oldman Plantation, (Falmouth MRA), KY 159, Falmouth 83002855.

[FR Doc. 04–12596 Filed 6–2–04; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1034 (Final)]

Certain Color Television Receivers From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain color television receivers,[2] provided for in subheadings and statistical reporting numbers 8528.12.28, 8528.12.3250, 8528.12.3290, 8528.12.36, 8528.12.40, 8528.12.44, 8528.12.48, 8528.12.52, and 8528.12.56 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective May 2, 2003, following receipt of a petition filed with the Commission and Commerce by Five Rivers Electronic Innovations, LLC, Greeneville, TN; the International Brotherhood of Electrical Workers (IBEW), Washington, DC; and the IUE-CWA, Industrial Division of the Communications Workers of America, Washington, DC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain color television receivers from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 26, 2004 (69 FR 3601). The hearing was held in Washington, DC, on April 15, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 26, 2004. The views of the Commission are contained in USITC Publication 3659 (May 2004), entitled *Certain Color Television Receivers from China: Investigation No. 731–TA–1034 (Final).*

Issued: May 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–12515 Filed 6–2–04; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of this investigation, the term "certain color television receivers" consists of complete and incomplete direct-view or projection-type cathode-ray tube color television receivers, with a video display diagonal exceeding 52 centimeters, whether or not combined with video recording or reproducing apparatus, which are capable of receiving a broadcast television signal and producing a video image. "Incomplete" CTVs are defined as unassembled CTVs with a color picture tube (i.e., cathode ray tube), printed circuit board or ceramic substrate, together with the requisite parts to comprise a complete CTV, when assembled. Specifically excluded from this investigation are computer monitors or other video display devices that are not capable of receiving a broadcast television signal.

DEPARTMENT OF JUSTICE

[AAG/A Order No. 008–2004]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to modify a Department-wide system of records entitled "Accounting Systems for the Department of Justice (DOJ), DOJ–001." This system of records was last published on May 28, 1999 at 64 FR 29069. Modifications include: a new method of storage and safeguards; updated and simplified routine uses; removal of the Immigration and Naturalization Service from the components covered, as INS is no longer part of DOJ; and addition of the Bureau of Alcohol, Tobacco, Firearms and Explosives, which joined the DOJ on January 24, 2003.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on this notice; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by July 13, 2004. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: May 25, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE—001

SYSTEM NAME:

Accounting Systems for the Department of Justice (DOJ).

SECURITY CLASSIFICATION:

Not classified.

SYSTEM LOCATIONS:

Justice Management Division, 950 Pennsylvania Ave., NW., Washington, DC 20530 [Internet Web site: *www.usdoj.gov*]; Central Offices of the Bureau of Prisons (BOP) at 320 1st St., NW., Washington, DC 20534 and Federal Prison Industries (FPI) at 400 1st St., NW., Washington, DC 20534 [Internet Web site: *www.UNICOR.Gov*]; and at any BOP/FPI Regional Offices and/or any of the BOP/FPI facilities at addresses provided in 28 CFR part 503 [and at the BOP Internet Web site: *www.bop.gov*]; Headquarters of the Drug Enforcement Administration (DEA), Office of Finance, 700 Army Navy Drive, Arlington, VA., 22202; and at DEA field offices listed as detailed in DEA–999 [and at the DEA Internet Web site: *www.dea.gov*]; Federal Bureau of Investigation (FBI) Headquarters at 935 Pennsylvania Ave., NW., Washington, DC 20535; and at FBI field offices as detailed in Justice/FBI–999 [and at the FBI Internet Web site: *www.fbi.gov*]; Office of Justice Programs (OJP), 810 7th Street, NW., Washington, DC 20531 [Internet Web site: *www.ojp.gov*]; U.S. Marshals Service (USMS), CS–3, 11th Floor, Washington, DC 20530–1000; and at 94 district offices of the USMS [listed at the USMS Internet Web site: *www.usms.gov*]; Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 650 Massachusetts Ave., NW., Washington, DC 20226 and at field offices [listed at the ATF Internet Web site: *www.atf.gov*].

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals/persons (including DOJ employees; and including current and former inmates under the custody of the Attorney General) who are in a relationship, or who seek a relationship, with the DOJ or component thereof—a relationship that may give rise to an accounts receivable, an accounts payable, or to similar accounts such as those resulting from a grantee/grantor relationship. Included may be:

(a) Those for whom vouchers (except payroll vouchers for DOJ employees) are submitted to DOJ requesting payment for goods or services rendered including vendors, contractors, experts, witnesses, court reporters, travelers, and employees;

(b) Those to whom the DOJ is indebted or who may have a claim against the DOJ, including those named in (a) above;

(c) Those who are indebted to DOJ, *e.g.*, those receiving goods, services, or benefits from DOJ; those who are liable for damage to Government property; those indebted for travel/transfer advances and overpayments; and those owing administrative fees and/or assessments; and

(d) Those who apply for DOJ benefits, funds, and grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

All documents used to reserve, obligate, process, and effect collection or payment of funds, *e.g.*, vouchers (excluding payroll vouchers), invoices; purchase orders; travel advances, travel/transfer vouchers and other such documentation reflecting information about payments due to or made to; claims made by, or debts owed by the individuals covered by this system, including fees, fines, penalties, overpayments, and/or other assessments, and to comply with reporting regulations of the Internal Revenue Service of the Department of Treasury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512; 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

This system of records is used by DOJ officials to maintain information adequate to ensure the financial accountability of the individuals covered by this system; provide an accounting and reporting of DOJ financial activities; meet both internal and external audit and reporting requirements; maintain an accounts receivable and accounts payable; and otherwise administer these and any other related financial and accounting responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DOJ may disclose relevant information as follows:

(1) To the Secretary of the Treasury to effect disbursement of authorized payments.

(2) To any Federal agency or to any individual or organization for the purpose of performing audit or oversight operations of the DOJ and to meet related reporting requirements.

(3) To appropriate officials and employees of a Federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

(4) To Federal, State, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(5) Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, foreign, or tribal, law enforcement

authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

(6) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

(7) In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

(8) To the news media and the public pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(9) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(10) To the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(11) To any Federal, State, or local agency, or tribal authority, which has a financial or other legitimate need for the information to perform official duties; or, similarly, to obtain information which would enable the Department to perform its official duties. Examples include: to permit such agency to perform accounting functions or to report to the Department of the Treasury regarding the status of a Federal employee/contractor debt owed to such Federal, State, or local agency, or tribal authority; to report on the status of Department efforts to collect such debt; to obtain information necessary to identify a Federal employee/contractor indebted to such agency; to provide information regarding the location of such debtor; or to obtain information which would permit the Department to confirm a debt and/or offset a payment otherwise due a Federal employee/contractor after any appropriate due process steps have been taken.

(12) To any Federal, State, local, or foreign agency, or tribal authority, or to any individual or organization, if there is reason to believe that such agency, authority, individual, or organization possesses information relating to a debt, the identity or location of the debtor, the debtor's ability to pay; or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforced collection of a debt; or relating to the civil action, trial or hearing concerning the collection of such debt; and if the disclosure is reasonably necessary to elicit such information and/or obtain cooperation of a witness or agency;

(13) To the U.S. Department of the Treasury, the U.S. Department of Defense, the U.S. Postal Service, or other disbursing agencies, in order to effect administrative, salary, or tax refund offset against Federal payments to collect a delinquent claim or debt owed the United States, or a State; to satisfy a delinquent child support debt; or to effect other actions required or permitted by law to collect such debt.

(14) To the U.S. Department of the Treasury any information regarding adjustments to delinquent debts, such as voluntary payments which decrease the debt, changes in the debt status resulting from bankruptcy, any increase in the debt, or any decrease in the debt resulting from changes in agency statutory requirements.

(15) To employers to effect salary or administrative offset to satisfy a debt owed the United States by the debtor or, when other collection efforts have failed, to the Internal Revenue Service (IRS) to effect an offset against Federal income tax refund due.

(16) To employers to institute administrative wage garnishments to recover debts owed the United States.

(17) To debt collection centers designated by the U.S. Department of the Treasury (or to a person with whom the DOJ has entered into a contract) to locate or recover assets of the DOJ; or for sale of a debt; or to otherwise recover indebtedness owed.

(18) In accordance with regulations issued by the Secretary of the Treasury to implement the Debt Collection Improvement Act of 1996, to publish or otherwise publicly disseminate information regarding the identity of the person and the existence of a non-tax debt in order to direct actions under the law toward delinquent debtors that have assets or income sufficient to pay their delinquent non-tax debts, but only upon taking reasonable steps to ensure the accuracy of the identity of a debtor; upon ensuring that such debtor has had an opportunity to verify, contest, and compromise a non-tax debt; and with the review of the Secretary of Treasury.

(19) To the IRS for reporting a discharged debt as potential taxable income.

(20) To the IRS to obtain taxpayer mailing addresses for debt collection use. These taxpayer mailing addresses may be disclosed

(a) To private collection contractors to locate a taxpayer and to collect or compromise a claim against, or debt of, the taxpayer, and

(b) To consumer or commercial reporting agencies to obtain a credit report.

(21) To the Department of Health and Human Services, and the Department of Labor, for computer matching in order to obtain names (including names of employees), name controls, names of employers, Taxpayer Identification Numbers, addresses (including addresses of employers) and dates of birth for the purpose of verifying identities in order to pursue the collection of debts.

(22) To other Federal or State agencies as required by law.

(23) To a consumer or commercial reporting agency in accordance with the Debt Collection Improvement Act of 1996.

(24) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(25) To a person or to an entity (*e.g.*, the U. S. Department of the Treasury and/or a consumer or commercial reporting agency), Taxpayer Identification Numbers (TIN's), to report on delinquent debt and/or to pursue the collection of debt, or where otherwise necessary or required, *e.g.*, U. S. Department of the Treasury for disbursement of payments authorized—provided such disclosure is not otherwise prohibited by Section 6103 of the Internal Revenue Code, or other law.

(26) The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Only as noted in Routine Use 23 above.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disks, magnetic tapes, microfiche, microfilm, file folders, and digitized images, or any other media.

RETRIEVABILITY:

Document number, name, taxpayer identification number, digital - identifiers, batch, or other identifiers.

SAFEGUARDS:

Access is limited to DOJ personnel with a need to know. Access to computerized information is generally controlled by passwords, or similar safeguard, which are issued only to authorized personnel. Records are retained in the form of digitized images on a server to which limited workstations have access. Access to the server from these workstations is controlled by passwords. Server and workstations are located in controlled-access buildings. Paper records, and some computerized media, are kept in locked files of locked offices during off duty hours. In addition, offices are located in controlled-access buildings.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedules 6 and 7.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Finance Staff, Justice Management Division (JMD), U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530.

Director, Federal Bureau of Prisons (BOP), 320 First St., NW., Washington, DC 20534. [The Director, BOP, is also system manager for Federal Prison Industries (FPI).]

Chief Financial Officer, Financial Management Division, Drug Enforcement Administration (DEA), 700 Army Navy Drive, Arlington, VA 22202.

Director, Federal Bureau of Investigation (FBI), 935 Pennsylvania Ave., NW., Washington, DC 20535.

Director, Accounting Division, Office of Justice Programs (OJP), 810 7th Street, NW., Washington, DC 20531.

Chief, Finance Staff, Management and Budget Division, U.S. Marshals Service, CS–3, 11th Floor, Washington, DC 20530–1000.

Office of Management/Chief Financial Officer, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Ave., NW., Washington, DC 20226.

NOTIFICATION PROCEDURES:

Same as **RECORD ACCESS PROCEDURES.**

RECORD ACCESS PROCEDURES:

Request for access to records in this system must be in writing and should be addressed as follows:

JMD: For records of the Offices, Boards and Divisions, address requests to the system manager named above for JMD.

OJP: Address request to the system manager named above.

BOP: Address requests to the Assistant Director, Administration Division, 320 First Street, NW., Washington, DC 20534.

FPI: Address requests to Assistant Director, Federal Prison Industries, 400 First Street, NW., Washington, DC 20534.

USMS: Address requests to the system manager named above, attention: FOIA/PA Officer.

DEA: Address requests to the system manager named above.

FBI: Address requests to the system manager named above.

ATF: Address request to Disclosure Division, Privacy Act Request, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The envelope and letter should be clearly marked "Privacy Act Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. If known, the requester should also identify the date or year in which a debt was incurred, *e.g.*, date of invoice or purchase order.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Record Access Procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Operating personnel, individuals covered by the system, and Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–12578 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Notice of Firearms Manufactured or Imported.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 61, on page 16609, on March 30, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 6, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally comments may be submitted to 0MB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Information Collection:* Notice of Firearms Manufactured or Imported.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 2 (5320.2). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: State, Local, or Tribal Government. Abstract: The form ATF F 2 (5320.2) is used by a federally qualified firearms manufacturer or importer to report firearms manufactured or imported and to have these firearms registered in the National Firearms Registration and Transfer Record as proof of the lawful existence of the firearm.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 816 respondents, who will complete the form within approximately 45 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 3,750 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 27, 2004.

Brenda E. Dyer,

Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 04–12470 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 26, 2004, Accustandard Inc., 125 Market Street, New Haven, Connecticut 06513, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Gamma hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Mecloqualone (2572)	I
Alpha-Ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl) pyrrolidine (PCPY) (7458).	I
Thiophene Analog of Phencyclidine (7470).	I
1-(1-(2-Thienyl)Cyclohexyl)Pyrrolidine (7473).	I
N-Ethyl-3-Piperidyl Benzilate (7482).	I
N-Methyl-3-Piperidyl Benzilate (7484).	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-Oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Etorphine (except Hydrochloride salt) (9056).	I
Codeine Methylbromide (9070)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morphine Methylbromide (9305)	I
Morphine Methylsulfonate (9306)	I
Morphine-N-Oxide (9307)	I
Myrophine (9308)	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Thebacon (9315)	I
Acetorphine (9319)	I
Drotebanol (9335)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except LAAM (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Benzethidine (9606)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Clonitazene (9612)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Dimenoxadol (9617)	I
Dimepheptanol (9618)	I
Dimethylthiambutene (9619)	I
Dioxaphetylbutyrate (9621)	I
Dipipanone (9622)	I
Ethylmethylthiambutene (9623)	I
Etonitazene (9624)	I
Etoxeridine (9625)	I
Furethidine (9626)	I
Hydroxypethidine (9627)	I
Ketobemidone (9628)	I
Levomoramide (9629)	I
Levophenacylmorphan (9631)	I
Morpheridine (9632)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Norpipanone (9636)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenoperidine (9641)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Racemoramide (9645)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I

Drug	Schedule
Propiram (9649)	I
1–Methyl–4–phenyl–4–propionoxypiperidine (9661).	I
1-(2–Phenylethyl)-4–phenyl–4acetoxypiperidine (9663).	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3–Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Benzylfentanyl (9818)	I
Beta-Hydroxyfentanyl (9830)	I
Beta-Hydroxy–3–methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3–Methylthiofentanyl (9833)	I
Thenylfentanyl (9834)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2250)	II
Nabilone (7379)	II
1-Phenylcylohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Metopon (9260)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9934)	II
Opium, raw (9600)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Piminodine (9730)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Bezitramide (9800)	II
Fentanyl (9801)	II
Moramide-intermediate (9802)	II

The firm plans to manufacture small quantities of bulk material for use in reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel, (CCD) and must be filed no later than August 2, 2004.

Dated: May 18, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12463 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 4, 2004, and published in the **Federal Register** on February 18, 2004, (69 FR 7655), Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2, 5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) (7348).	I
Alpha-methyltryptamine (AMT) (7432).	I
5-methoxy-N-, N-diisopropyltryptamine (5–MeO–DIPT) (7439).	I

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Applied Science Labs to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Applied Science Labs to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: May 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12453 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 4, 2004, Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2,5-dimethoxy-4(n)-propylthiophenethylamine (2C-T-7) (7348).	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I

Drug	Schedule
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2-5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Alpha-methyltryptamine (AMT) (7432).	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-methxy-N,N-diisopropyltryptamine (5-MeO-DIPT) (7439).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (PCPy) (7458).	I
1[1-(2 Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Methamphetamine (1105)	II
1-Phenylcylohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than August 2, 2004.

Dated: May 18, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12460 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 1, 2004, American Radiolabeled Chemicals, Inc., 101 Arc Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcment Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ecgonine (9180)	II
Meperidine (9230)	II
Metazocine (9240)	II
Morphine (9300)	II
Oxymorphone (9652)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than August 2, 2004.

Dated: May 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12467 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 17, 2004, Boehringer Ingelheim Chemicals Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Levo-alphacetylmethadol (9648)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for formulation into finished pharmaceuticals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than August 2, 2004.

Dated: May 5, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12461 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 4, 2004, and published in the **Federal Register** on February 18, 2004, (69 FR 7655), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50619, made application by renewal to the Drug

Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamaine (1100)	II
Methylphenidate (1724)	II
Dextropropoxyphene (9273)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Cambrex Charles City, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basis classes of controlled substances listed as granted.

Dated: May 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12456 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 15, 2004, Cambrex North Brunswick, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Methadone (9250) and Methadone Intermediate (9254), basic classes of controlled substances listed in Schedule II.

The firm plans to manufacture the controlled substances for research and development purposes.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than August 2, 2004.

Dated: May 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12465 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Contolled Substances; Notice of Registration

By Notice dated March 5, 2004 and published in the **Federal Register** on March 15, 2004, (69 FR 12178), Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basis classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The firm plans to import the listed controlled substances as raw materials for use in the manufacturer of bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Johnson Matthey Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Johnson Matthey Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed.

Dated: May 18, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12457 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 29, 2004, Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphine (9150)	II

The firm plans to manufacture bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office

of Chief Counsel (CCD) and must be filed no later than August 2, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12462 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 5, 2004 and published in the **Federal Register** on March 15, 2004, (69 FR 12179), Mallinckrodt Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Raw Opium (9600)	II
Opium poppy (9650)	II
Concentrate of Poppy Straw (9670).	II

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Mallinckrodt Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed.

Dated: May 18, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12458 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 4, 2004, and published in the **Federal Register** on February 18, 2004, (69 FR 7657), Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of THC Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture bulk products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Organichem Corporation to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Organichem Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substance listed is granted.

Dated: May 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12455 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I and II and prior to issuing a registration under section 10029a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 21, 2004, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The firm plans to import small quantities of the listed substances for the National Institute of Drug Abuse and other clients.

Any manufacturer holding or applying for registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative (CCD), and must be filed no later than July 6, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applications for registration to import basic classes of

any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12464 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 21, 2004, Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture small quantities of cocaine derivatives and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than August 2, 2004.

Dated: May 21, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12466 Filed 6–2–05; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 5, 2004 and published in the **Federal Register** on March 15, 2004, (69 FR 12181), Roche Diagnostics Corporation, Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Cocaine (9041)	II
Benzoylecogonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import the listed controlled substances to manufacture diagnostic products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code section 823(a) and determined that the registration of Roche Diagnostics, Corporation to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed.

Dated: May 18, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12459 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 4, 2004, and published in the **Federal Register** on February 18, 2004, (69 FR 7657–7658), Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal and on January 21, 2004, by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Morphine (9300)	II

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Siegfried (USA), Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Siegfried (USA), Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: May 21, 2004

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–12454 Filed 6–2–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 24, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Diesel Particulate Matter Exposure of Underground Coal Miners.

OMB Number: 1219–0124.

Frequency: On occasion and annually.

Type of Response: Recordkeeping and reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 148.

Number of Annual Responses: 1,004.

Estimated Time Per Respondent: 4.8 hours annually.

Total Burden Hours: 708.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $7,878.

Description: 30 CFR 75.1915/72.503, 72.510, and 72.520, protect coal miners who work on and around diesel-powered equipment. The internal combustion engines that power diesel equipment expose miners to potential health risks from exposure to diesel exhaust emissions. These standards and regulations contain information collection requirements for underground coal mine operators.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–12527 Filed 6–2–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 26, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143.

Frequency: On occasion and annually.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; and State, local, or tribal government.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time Per Response: N/A.

Total Burden Hours: 1.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: By complying with the information-collection requirements in the Standard on Presence Sensing Device Initiation/PSDI (29 CFR 1910.217(h)), employers ensure that PSDI-equipped mechanical power presses are in safe working order, thereby preventing severe injury and death to press operators and other employees who work near this equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the requirements and that the equipment is safe.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180).

OMB Number: 1218–0221.

Frequency: On occasion; semi-annually; and monthly.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal

government; and State, local, or tribal government.

Number of Respondents: 20,000.

Number of Annual Responses: 462,320.

Estimated Time Per Response: Varies from 5 minutes to disclose certification records to 1 hour to conduct rated load tests.

Total Burden Hours: 174,062.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: 29 CFR 1910.180 ("the Standard") regulates the operation of crawler, locomotive, and truck cranes. The paperwork provisions of the Standard specify requirements for developing, maintaining, and disclosing inspection records for cranes and ropes, as well as disclosing written reports of rated load tests.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Overhead and Gantry Cranes Standard (29 CFR 1910.179).

OMB Number: 1218–0224.

Frequency: On occasion and monthly.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; and State, local, or tribal government.

Number of Respondents: 35,000.

Number of Annual Responses: 720,595.

Estimated Time Per Response: Varies from 5 minutes to disclose certification records to 2 hours to obtain and post rated load information on cranes.

Total Burden Hours: 360,179.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: 29 CFR 1910.179 ("the Standard") regulates the operation of overhead and gantry cranes. The paperwork provisions of the Standard specify requirements for: Marking the rated load of cranes; preparing certification records to verify the inspection of the crane hooks, hoist chains, and ropes; and preparing reports of rated load test for repaired hooks or modified cranes. Records and reports must be maintained and disclosed upon request.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)).

OMB Number: 1218–0229.

Frequency: Weekly and monthly.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; and State, local, or tribal government.

Number of Respondents: 295,000.

Number of Annual Responses: 9,975,130.

Estimated Time Per Response: Varies from 2 minutes to disclose certification records to 20 minutes to inspect the parts, auxiliary equipment, and safeguards of each mechanical power press.

Total Burden Hours: 1,373,054.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: The purpose of the information collection requirements in the Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)) is to reduce employees' risk of death or serious injury by ensuring that employers maintain the mechanical power presses used by the employees in safe operating condition.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Additional Requirements for Special Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)).

OMB Number: 1218–0237.

Frequency: On occasion.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; and State, local, or tribal government.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time Per Response: N/A.

Total Burden Hours: 1.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: The standard on Additional Requirements for Special Dipping and Coating Operations, (29 CFR 1910.126(g)(4)), requires employers to post a conspicuous sign near each piece of electrostatic-detearing equipment that notifies employees of the minimum safe distance they must maintain between goods undergoing electrostatic detearing and the electrodes or conductors of the equipment used in the process. Doing so reduces the likelihood of igniting the explosive chemicals used in electrostatic-detearing operations.

OSHA has determined that where electrostatic equipment is being used, the information has already been ascertained and that the "safe distance" has been displayed on a sign in a permanent manner. OSHA has had discussions with individuals familiar with the use of this equipment, leading the Agency to believe that this equipment is no longer being manufactured or used due to changes in technology. OSHA does not believe there is any burden associated with the information collection requirement in the provision and is, therefore, estimating zero burden hours and no cost to the employer.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–12528 Filed 6–2–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 26, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Benefit Rights and Experience Report.

OMB Number: 1205–0177.

Frequency: Quarterly.

Affected Public: State, local, or tribal government.

Number of Respondents: 53.

Number of Annual Responses: 216.

Estimated Time Per Response: 30 minutes.

Burden Hours Total: 108.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: Data for this report is a by-product of operating the program. It is transmitted electronically to the National Office quarterly. This data is used by the National Office in solvency studies, cost estimating and modeling, and to assess State benefit formulas. If this data were not available, cost estimating and modeling would be less accurate.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–12529 Filed 6–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 25, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Transmittal of Unemployment Insurance Materials.

OMB Number: 1205–0222.

Frequency: As needed.

Affected Public: State, local, or tribal government.

Number of Respondents: 53.

Number of Annual Responses: 80.

Estimated Time Per Response: One minute.

Burden Hours Total: 53.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: The information collected on the Form MA 8–7 is used by the Secretary to make findings required for certification to the Secretary of the Treasury for payment to States or for certification of the State law for purposes of aditional tax credit. If this information is not collected, the Secretary cannot make such certifications.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–12530 Filed 6–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in the Middle East and North Africa (MENA) Region; Combating Exploitive Child Labor Through Education in Ethiopia, Mozambique, Rwanda, and Zambia

June 3, 2004.

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.

Funding Opportunity Number: SGA 04–09.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

Key Dates: Deadline for Submission of Application is July 6, 2004.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $24 million through one or more cooperative agreements to an organization or organizations to improve access to quality education programs as a means to combat exploitive child labor in the Middle East and North Africa (MENA) region (up to $8 million) and in the African sub-region of Ethiopia, Mozambique, Rwanda, and Zambia (up to $16 million). The activities funded will complement and expand upon existing projects and programs to improve basic education in these regions, and, where applicable, provide access to basic education to children in areas with a high incidence of exploitive child labor. For both regions, applications must be regional in approach and respond to the entire Statement of Work outlined in this Solicitation for Cooperative Agreement Applications. In the MENA region, activities under this cooperative agreement must focus on the prevention and elimination of exploitive child labor through basic education throughout the region, with direct education interventions in Lebanon and Yemen, and must also specifically address the need to expand access to girls' education, involve civil society, and build models to strengthen institutional capacity to eliminate exploitive child

labor throughout the region. In the African sub-region of Ethiopia, Mozambique, Rwanda, and Zambia, activities under this cooperative agreement must prevent and eliminate exploitive child labor by improving access and quality of education for HIV/AIDS-affected children engaged in or at-risk of entering exploitive child labor.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement to one or more qualifying organizations for the purpose of preventing child labor by expanding access to and quality of basic education and strengthening government and civil society's capacity to address the education needs of working children and those at-risk of entering work in the MENA region, and in the African sub-region of Ethiopia, Mozambique, Rwanda, and Zambia. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2004, Pub. L. No. 108–199, 118 Stat. 3 (2004). The cooperative agreement or cooperative agreements awarded under this initiative will be managed by ILAB's International Child Labor Program to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in promoting school attendance in areas of those countries where children are engaged in or are most at-risk of working in the worst forms of child labor.

A. Background and Program Scope

1. USDOL Support of Global Elimination of Exploitive Child Labor

The International Labor Organization (ILO) estimated that 211 million children ages 5 to 14 were working around the world in 2000. Children who work full-time are generally unable to attend school, although many child workers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, USDOL has provided over U.S. $275 million in technical assistance funding to combat exploitive child labor in over 60 countries around the world.

Programs funded by USDOL range from targeted action programs in specific sectors to more comprehensive efforts that target activities defined by ILO Convention No. 182 on the Worst Forms of Child Labor. From FY 2001 to FY 2004, the U.S. Congress has appropriated U.S. $148 million to USDOL for a Child Labor Education Initiative to fund programs aimed at increasing access to quality, basic education in areas with a high incidence of abusive and exploitive child labor. The cooperative agreement(s) awarded under this solicitation will be funded through this initiative.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety and future employability of children around the world by increasing access to basic education for working children and those at-risk of entering work. Elimination of exploitive child labor depends in part on improving access to, quality of, and relevance of education.

The Child Labor Education Initiative has four goals:

a. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

b. Strengthen formal and transitional education systems that encourage working children and those at-risk of working to attend school;

c. Strengthen national institutions and policies on education and child labor; and

d. Ensure the long-term sustainability of these efforts.

2. Barriers to Education for Working Children, Regional Backgrounds, and Focus of Solicitation

Throughout the world, there are complex causes of exploitive child labor as well as barriers to education for children engaged in or at-risk of entering exploitive child labor. These include: Poverty; education system barriers; infrastructure barriers; legal and policy barriers; resource gaps; institutional barriers; informational gaps; demographic characteristics of children and/or families; cultural and traditional practices; and weak labor markets. Although these elements and characteristics tend to exist throughout the world in areas with a high incidence of exploitive child labor, they manifest themselves in specific ways in each region/country of interest in this solicitation.

Applications in response to the solicitation for MENA or Africa must be regional in approach, *i.e.*, applications must include all of the countries in the region and promote regional activities and sharing of best practices and lessons learned to enhance and improve education and exploitive child labor policies and practices among project countries. The regional focus of the project should also emphasize policy and program approaches that, through the sharing of knowledge and lessons learned from other countries, augment an individual country's capacity to address the education barriers faced by working children, allowing more of them to attend and complete quality educational programs.

The activities under this cooperative agreement in the MENA region must focus on the prevention and elimination of exploitive child labor through basic education, through direct education interventions in Lebanon and Yemen, and must expand access to girls' education, strengthen civil society, and build institutional capacity to eliminate exploitive child labor throughout the MENA region. In the African sub-region of Ethiopia, Mozambique, Rwanda, and Zambia, activities under this cooperative agreement must prevent and eliminate child labor by improving access to and quality of education for HIV/AIDS-affected children engaged in or at-risk of entering exploitive child labor. Applicants must be able to identify the specific barriers to education and the education needs of specific categories of children targeted in their proposed project (*e.g.*, children withdrawn from work, children at high risk of dropping out of school into the labor force, and/or children still working in a particular sector) and how capacity building and policy change can be used to address these barriers to education and the education needs.

Background information on education and exploitive child labor in each of the regions/countries of interest is provided below. For additional information on exploitive child labor in these regions/countries, applicants are referred to The Department of Labor's 2003 Findings on the Worst Forms of Child Labor available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2003/overview.htm* or in hard copy from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*.

The MENA Region

In 2000, the ILO estimated that 6.4 percent of children ages 5 to 14, or 13.4 million children, were working in the MENA region. However, the real magnitude of the problem may be much larger when children working in the informal sector are counted, such as those who work in private households as domestic servants and street children who are forced into commercial sexual exploitation and other illicit activities.

Studies indicate that exploitive child labor in the MENA region is concentrated in low-income groups or areas, urban slums, and remote

peripheral villages. In rural areas, children are likely to work on farms in activities such as herding and harvesting, or in domestic or artisanal work within the small or extended family, for little or no wages. In urban areas, children are engaged in mechanical work (especially in automobile repair), market or street vending, in construction, factories, workshops, restaurants, and in private homes as domestic servants. Children working in urban slums and living in the streets are particularly vulnerable to a wide range of exploitive practices. Increasingly, urban children in the region are drawn into illicit activities such as drug trafficking and the commercial sex industry.

The majority of working children in the MENA region do not attend school. Those who combine school and work often lack adequate food or sleep, or sufficient time to study and prepare homework. Such children complete fewer years of schooling than those who do not work, dropping out at a young age. By not attending school, or by attending for only short periods of time, working children do not gain many of the skills they need to obtain stable and more highly remunerated employment as adults.

Despite these challenges, some governments have been making significant efforts to combat child labor, particularly in its worst forms. In recent years, a number of the MENA countries have raised the minimum age for admission to employment to coincide with the age for completion of compulsory education. Minimum age restrictions for employment in most of the MENA countries range between 14 and 16 years of age. Secondly, some countries in the region have prohibited children under the age of 16 to 18 years from performing certain hazardous kinds of work (*e.g.*, working in mines, with chemicals, or at night). Finally, as of December 2003, all of the MENA countries had ratified ILO Convention No. 182 on the Worst Forms of Child Labor.

Ministries of Labor and employers and workers organizations in Egypt, Jordan, Lebanon, Morocco and Yemen, for example, have established child labor units to combat the problem of exploitive child labor in a systematic and comprehensive manner. While some MENA countries have been engaged on the issue of exploitive child labor for some time, others are still in the process of developing their national plans of action, and the issue of exploitive child labor has yet to be addressed seriously. Across the region, there is a need to raise awareness about child labor among policy makers and civil society and to collect more reliable data on the extent and nature of exploitive child labor.

In recent years, the ILO's International Program on the Elimination of Child Labor (ILO–IPEC), with support from USDOL, has assisted a number of countries in the MENA region by enhancing the capacity of key partners and assisting governments to combat exploitive child labor through developing and implementing national policy and program frameworks; models for prevention, withdrawal, and rehabilitation; and comprehensive advocacy programs.

ILO–IPEC is supporting the Governments of Egypt, Jordan, Lebanon, Morocco and Yemen to adopt and implement an explicit child labor policy as an integral component of their national development efforts. This child labor policy will aim to identify national priorities and realize objectives for the elimination of exploitive child labor through a coherent national policy for the elimination of exploitive child labor.

ILO–IPEC and other international organizations have implemented projects that aim to remove children from exploitive child labor and enroll them in school. In addition, a host of projects have been undertaken to promote access to quality basic education. Some of the education ministries in the region have developed scholarship programs, flexible schedules, and alternative curricula designed to enable all children to obtain a quality basic education. A number of local non-governmental organizations (NGOs), development agencies, and international organizations, such as UNICEF, Save the Children, and the U.S. Agency for International Development (USAID), have instituted programs to promote primary education.

Despite these efforts to eliminate exploitive child labor and promote basic education, significant gaps have not been addressed and continue to deprive working children of access to quality basic education. Although some barriers are more prominent in certain countries than others, in general across the region, these needs include:

a. Lack of coordination of efforts among governmental and non-governmental stakeholders to combat exploitive child labor with efforts to promote basic education;

b. Lack of government recognition of the link between education and exploitive child labor;

c. Lack of community awareness of the dangers inherent in exploitive child labor;

d. Lack of information sharing on exploitive child labor and education among governmental and non-governmental organizations and actors;

e. Lack of teacher training on exploitive child labor and on how to effectively instruct at-risk and working children;

f. Lack of relevant curriculum and instruction to provide students with the necessary skills to secure suitable employment opportunities;

g. Lack of adequately trained teachers and insufficient teacher incentives;

h. Lack of access to schools, particularly in rural areas;

i. Lack of gender parity in access to, participation in, and retention in school; and

j. Lack of non-formal or other affordable schooling alternatives.

The MENA project must consist of two components: (1) Addressing education barriers for working children at the regional level; and (2) implementing direct education services at the country level in Lebanon and Yemen. The regional activities will help to pave the way for more focused educational interventions for future projects in the region, and the direct education service delivery component will center around national models in Lebanon and Yemen. Both countries have already made significant progress on conducting research to better understand the characteristics of child labor, raising awareness among policymakers and civil society on the problem of exploitive child labor and its negative consequences, and mobilizing society to take action against it. As such, both countries are prepared to support direct education interventions to serve as pilot projects that can later be extended to other countries in the region when the social dialogue surrounding exploitive child labor there is more fully developed.

The regional component of this project must focus on promoting policy reform through capacity building to support the strengthening of civil society mechanisms to eliminate exploitive child labor, raise awareness on the issue, and promote dialogue among government and civil society organizations. The target population for this solicitation is working children and those at-risk of working or exploitation, particularly girls, over-age youth, youth in urban slum and squatter settlements, rural, refugee, and bedouin (nomadic) children. Applicants must identify and select from among these possible target groups, and seek to fill current gaps or needs in the provision of basic education to the chosen target population. Strategies are expected to

complement activities of the President's Middle East Partnership Initiative (MEPI), USAID, ILO-IPEC, and other development initiatives where most appropriate. (MEPI is a Presidential initiative, implemented by the U.S. Department of State. MEPI was founded to support economic, political, and educational reform efforts in the Middle East and to champion opportunities for all people of the region, especially women and youth. For more information about MEPI and a list of the countries included in the initiative, please visit the U.S. Department of State Web site at: *http://mepi.state.gov/mepi/*).

Due to the need to strengthen civil society, reinforce government efforts to combat exploitive child labor and promote sustainability in the region, applicants are encouraged to predominantly support policy mechanisms and build capacity to undertake educational reforms that enable working children to benefit from education programs.

The regional component of the Child Labor Education Initiative awarded under this cooperative agreement must complement existing approaches by focusing on ways to: (1) Enhance the viability of schooling as an alternative to exploitive child labor; (2) mobilize stakeholders to participate in promoting schooling as a means to combat child labor; and (3) build the capacity of future national experts who will contribute directly to government policies through their commitment to and expertise in using school interventions as models to reduce exploitive child labor.

In response to the regional component of this solicitation, applicants are encouraged to:

a. Promote innovative approaches to address barriers and the sharing of good practices and lessons learned on exploitive child labor and education in the MENA region, particularly among the designated countries for MEPI and with other USDOL funded projects in the region;

b. Promote awareness raising of core labor standards and educational strategies for vulnerable children through in-service training;

c. Support the institutionalization of reforms that might lead to improved incorporation of working children into educational settings, by mobilizing stakeholders (at the local and national level) and by developing the capability to manage interventions using local resources and networks;

d. Stimulate increased accountability and creative incentives for schools to enroll and retain children who are at-risk of entering abusive labor;

e. Strengthen and build the capacity of NGOs, including faith-based organizations, community-based organizations, and the private sector, through organizational development and training, to provide educational programs;

f. Encourage intra-governmental collaboration among relevant agencies within the MENA region, particularly in the designated countries for MEPI, that will enhance the quality of basic education;

g. Complement the reform objectives of the MEPI Partnership Schools Program as well as the strategies set out in the 2003 United Nations Development Program (UNDP) Arab Human Development Report to build a more knowledge-oriented society throughout the MENA region; and

h. Support innovative, cross-sectoral and international strategies that will ensure institutional development and the active participation of key stakeholders in combating exploitive child labor.

In addition to responding to the regional component of this solicitation, all applications for the MENA region must include strategies for implementing models of direct education intervention in Lebanon and Yemen. Applicants are strongly encouraged to focus program interventions in Lebanon and Yemen on at least two areas: (1) At the national education policy level to mainstream child labor within the national education strategy; and (2) at the regional and local levels targeting children working in exploitive child labor and the communities where they live and work. In Lebanon and Yemen, direct education service delivery interventions must be designed as demonstration projects with direct policy applications.

Direct education intervention efforts under this solicitation are expected to provide access to basic and vocational education to children working in exploitive activities, particularly in developing innovative ways to provide remedial education, accelerated learning, and other forms of non-formal education to bridge the gaps that exist in education delivery to these vulnerable children. Applicants are encouraged to develop creative and innovative methods to make schools more accommodating and relevant to children engaged in or at-risk of entering exploitive child labor, such as through awareness raising for school personnel, by integrating children of legal working age into vocational and technical education programs, introducing a flexible school calendar, or by providing services that are relevant to the educational needs of working children, including programs, curriculum, schedule, equipment, and classroom materials.

Until now, most interventions to address exploitive child labor in Lebanon and Yemen have focused on the more visible children in urban areas, such as working street children. However, in Lebanon the following regions suffer from a prevalence of exploitive child labor and a lack of appropriate interventions: Beqaa, South Lebanon, North Lebanon, in particular, Bab el Tebbaneh, Northern Tripoli, and Akkar, and the suburbs of Beirut (specifically Ghobeiry, Ouzai, Bourj Hammoud, Sin el Fil-Nabaa, and Bourj el-Barajneh). Applicants under this solicitation must provide or facilitate the provision of educational opportunities to children engaged in or at-risk of entering exploitive child labor in three to five of the regions identified above in order to reach children at-risk of or working in exploitive child labor.

In Yemen, the majority of working children are girls who labor in agriculture. Although girls in this sector labor under hazardous conditions with few educational opportunities, they have traditionally been seen as being safe working in a family environment. The regions of Hajjah, Mahwait, Dammar, Bayda, Ibb, and Abyan have been identified as areas with large numbers of child agricultural workers. Applicants under this solicitation must focus educational interventions in three to five of the regions identified above in order to reach children engaged in hazardous agricultural work that prevents school enrollment and children who are at high risk of entering hazardous child labor. The total number of target regions for both countries should not exceed ten.

Note to All Applicants: Applicants are encouraged to consider the number of ongoing projects and amount of resources already in existence when making resource allocations for the region. Applicants are particularly encouraged to coordinate actions with the ongoing ILO–IPEC Programs and/or USDOL Child Labor Education Initiatives in the region. Due to the unique needs and gaps in the MENA region, applicants are strongly encouraged to respond to regional needs, particularly in terms of efforts to promote gender parity in access to, participation and retention in basic education. Applicants are urged to adopt strategies that will ensure sustainable results and to involve the

private sector, policymakers and civil society to the greatest extent possible.

Country background information on Lebanon and Yemen is provided in Appendix B.

Ethiopia, Mozambique, Rwanda, and Zambia

In 2000, the ILO estimated that 22.7 percent of children ages 5 to 14, or 48 million children, were working in Sub-Saharan Africa. Compared to other regions, the proportion of the total child population that is working in Sub-Saharan Africa is the highest in the world. Child labor most frequently occurs within the context of the family economy where children are encouraged to work in order to contribute to the family income. The percentage of working children ages 10–14 varies within the region, ranging as low as 11.5 percent in Zambia to as high as 41 percent in Ethiopia and Rwanda. The HIV/AIDS pandemic has increased children's participation in work, and impacted their ability to access basic education.

HIV/AIDS-affected children are those who have HIV/AIDS; those who have lost one or both parents to the disease; those who live in a household with a parent or other family member who is ill; those who live in families in which resources—financial or emotional—are overstretched as a result of increased numbers of children for whom they are responsible; those who live in communities severely affected—economically and socially—by the impact of HIV/AIDS; and those whose circumstances place them at risk of HIV infections, such as through commercial sexual exploitation, or infection acquired in the workplace (*e.g.*, domestic service). There are currently approximately 2.5 million HIV/AIDS orphans in Ethiopia, Mozambique, Rwanda and Zambia. This number is expected to rise to an estimated 3.8 million by 2010.

HIV/AIDS-affected children face a range of problems including limited access to basic necessities (including education), psychological trauma due to the collapse of their families, stigmatization and discrimination, and increased vulnerability to exploitive child labor. There is insufficient data available in the African sub-region to determine the specific forms of exploitive child labor in which all children affected by HIV/AIDS are participating. However, recent country-specific and regional reports provide evidence that this population is particularly vulnerable to the following labor activities:

Agriculture: The majority of children working in the sub-region are found in subsistence and commercial agriculture in rural areas. Children often work long hours and are exposed to pesticides, fertilizers, snake and insect bites, unhealthy physical exertion, and exposure to extreme weather conditions. Children are rarely provided with protective gear and may work with dangerous equipment.

Domestic Work: Domestic work is more common among girls than boys, and orphans are especially vulnerable to this work. Children working as domestic servants are often treated harshly by their employers and required to work extremely long hours for minimal wages. Even when child domestics are permitted to attend school, the number of hours and the rigors this work entails lead to sporadic attendance and poor participation.

Urban Informal Sector/Street Work: The number of street children in the African sub-region is increasing. Street children are found working in urban environments in a variety of activities. In addition to begging and engaging in petty crime, these activities can include street vending and hawking, stone crushing, washing cars, working as taxi conductors, market work, carrying items, as well as other informal activities. Urban street children may also be increasingly at-risk of engaging in commercial sexual exploitation. Several studies in the region indicate that large numbers of children living on the streets are orphans.

Commercial Sexual Exploitation: Commercial sexual exploitation of children is present in cities and towns in the sub-region and in some countries, such as Ethiopia and Mozambique, it is on the rise. Children engaged in commercial sexual exploitation are exposed to physical abuse and sexually transmitted diseases (STDs), including HIV/AIDS. Recent reports suggest that children engaged in this activity are likely to have lost at least one parent.

Child Trafficking: Trafficking of children for domestic work, work in agriculture, and commercial sexual exploitation is also reported to be a problem in some of the countries of the sub-region. Children orphaned by HIV/AIDS are at-risk of being trafficked by families or caregivers who cannot provide for them.

Barriers to and Gaps in the Education System in HIV/AIDS-Affected Areas

The HIV/AIDS pandemic affects the availability of resources for education by reducing family incomes and requiring families to increase financial allocations for medical expenses. Similarly, public funds that might previously have been available for education have been diverted to fund health and AIDS related programs. The HIV/AIDS crisis has also negatively impacted community contributions to school related improvements. There are also other systemic problems that prevent HIV/AIDS-affected children who are working or at-risk of working in exploitive child labor from taking full advantage of education opportunities. These include:

a. Lack of schools, especially in rural areas and at the secondary level;

b. Lack of transportation to schools, especially for girls, who may be placed at-risk of sexual assault and discouraged from pursuing a secondary education;

c. Denial of access to education for HIV/AIDS-affected children by family members or teachers;

d. Shortage of teachers, and support for HIV/AIDS educators. (Teachers are one of the professional groups most vulnerable to HIV/AIDS infection. Teachers infected by HIV/AIDS have much higher absenteeism rates and may suffer stress so severe that it interferes with the quality of their teaching);

e. Insufficient classroom space and teaching staff to meet the needs of growing school populations, especially in rural areas;

f. High cost of school participation for families that must buy uniforms, and pay school enrollment, materials, examination and transportation fees;

g. Insufficient political will, corruption, weak legal frameworks, and a lack of enforcement of child labor and compulsory and free education laws;

h. Poor quality, irrelevant curricula and instructional methods that parents and community members perceive to be ineffective for preparing their children to participate in the workforce;

i. Mistreatment of children in schools, including sexual harassment, corporal punishment, and discrimination based on gender, HIV/AIDS status and other factors;

j. Lack of support for families affected by HIV/AIDS, which limits their capacity to prioritize the educational needs of their children;

k. Lack of training, compensation, professional support and supervision for teachers;

l. Lack of quality instructional materials (*e.g.*, books and equipment), inadequate school facilities and equipment, (latrines, desks, chairs) and limited support for children who speak regional or indigenous languages; and

m. Limited opportunities for non-formal, vocational, and technical training. (HIV/AIDS-affected children are often unable to access these limited

opportunities due to their inability to pay vocational school fees. The opportunities that do exist are normally only available to children who have completed secondary school).

The number of HIV/AIDS orphans is expected to grow over the next decade, leaving many more children vulnerable to working in exploitive child labor. The Child Labor Education Initiative project awarded under this solicitation in the sub-region of Ethiopia, Mozambique, Rwanda, and Zambia should address all of the following objectives:

(1) Increase the capacity of families and communities to provide for the basic needs of HIV/AIDS-affected children. This may include strategies to strengthen families' ability to cope with economic hardships without withdrawing children from school, the development of community-specific education interventions, and efforts to strengthen community mobilization and support networks.

(2) Improve access to basic education, as well as vocational and technical training, for working children and children vulnerable to engaging in exploitive child labor. Innovative forms of education delivery are expected to be designed to address the special needs of HIV/AIDS-affected children. A special emphasis must be given to ensure that education opportunities are flexible for children of legal working age, who must combine education with non-hazardous, part-time work.

(3) Improve the quality of basic, non-formal, and vocational education by introducing life skills curricula, coordinating with school feeding programs, building the capacity of school management, supporting teacher training, providing school materials, and addressing infrastructure constraints such as lack of water, latrines, desks, and chairs.

(4) Raise awareness about the dangers of child labor and the importance of education. Community sensitization campaigns should target teachers, school administrators, and community leaders and focus on improving their understanding of the difficulties faced by orphans and children affected by HIV/AIDS. Teachers must be trained in counseling skills and equipped with teaching strategies to address the special needs of this vulnerable population. Activities that promote youth leadership are also encouraged.

(5) Conduct targeted research and studies to improve the knowledge base concerning the relationship between HIV/AIDS and children working in exploitive child labor, as well as how the disease affects enrollment and attendance in basic education. Additional research could focus on labor market studies and labor saving technologies.

(6) Support government efforts to implement national policies instituting free education, and build government capacity to provide for the special educational needs of orphans and HIV/AIDS-affected children through targeted technical assistance and training, advocating for new policy development, providing support for enforcement of existing education and child labor laws, and supporting HIV/AIDS awareness and prevention programs.

Country specific information is provided in Appendix B.

Note to Applicants for All Countries: Applicants are encouraged to include letters of acknowledgment and/or endorsement of their application from the host government's Ministry of Labor and Ministry of Education with the proposal. For additional information on exploitive child labor in these countries, applicants are strongly encouraged to refer to The Department of Labor's 2003 Findings on the Worst Forms of Child Labor available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2003/overview.htm.*

B. Statement of Work

Taking into account the challenges to educating working children in each region/country of interest, the applicant must facilitate, and implement, as appropriate, creative and innovative approaches to promote policies and services that will enhance the provision of educational opportunities to children engaged in or removed from exploitive child labor. The expected outcomes/results of the project are: (1) Increase educational opportunities and access (enrollment) for children who are engaged in, at-risk of, and/or removed from exploitive child labor; (2) encourage retention in, and completion of educational programs; and (3) expand the successful transition of children in non-formal education into formal schools or vocational programs.

In the course of implementation, each project must promote the goals of USDOL's Child Labor Education Initiative listed above in Section I (A) (1). Because of the limited available resources under this award, applicants should implement programs that complement existing efforts, particularly those funded by USDOL, including Timebound Programs for the elimination of the worst forms of child labor and other projects implemented by ILO–IPEC, and, where appropriate, replicate or enhance successful models to serve expanded numbers of children and communities. However, applicants should not duplicate existing efforts and/or projects and should work within host government child labor and education frameworks. In order to avoid duplication, enhance collaboration, expand impact, and develop synergies, the cooperative agreement awardee (hereafter referred to as "Grantee") should work cooperatively with national stakeholders in developing project interventions. Applicants are strongly encouraged to discuss proposed interventions, strategies, and activities with host government officials during the preparation of an application for this cooperative agreement.

Partnerships between more than one organization are also eligible and encouraged, in particular with qualified, regionally-based organizations in order to build local capacity; in such a case, however, a lead organization must be identified. Applicants whose strategies include the direct delivery of education are encouraged to enroll at least one-quarter of the targeted children the Grantee is attempting to reach in educational activities during the first year of project implementation. Under this cooperative agreement, vocational training for adolescents and income generating alternatives for parents are allowable activities.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education to the children targeted, the applicant must, at a minimum, prepare responses following the outline of a preliminary project document presented in Appendix A and discussed in sections IV(B) and VI(C)(1). This response will be the foundation for the final project document that must be approved after award of the cooperative agreement. If the application does not propose interventions aimed toward the target groups and geographical areas as identified in section I(A)(2), then the application will be considered unresponsive.

Note to All Applicants: Grantees are expected to consult with and work cooperatively with stakeholders in the countries, including the Ministries of Education, Labor, and other relevant ministries, NGOs, national steering/advisory committees on child labor, education, faith and community-based organizations, and working children and their families. Grantees must ensure that their proposed activities and interventions are within those of the countries' national child labor and education frameworks and priorities, as applicable. Grantees are strongly encouraged to collaborate with existing projects, particularly those funded by

USDOL, including Timebound Programs and other projects implemented by ILO–IPEC. However, applicants are reminded that this is a stand-alone project and that other Federal awards cannot supplement as matching funds a project awarded under this cooperative agreement as described in section V(A)(4).

II. Award Information

Type of assistance instrument: cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in section VI(C). The duration of the projects funded by this solicitation is four (4) years. The start date of program activities will be negotiated upon awarding of the cooperative agreement, but will be no later than September 30, 2004.

Up to U.S. $24 million will be awarded under this solicitation, with up to $8 million in the MENA region (including Lebanon and Yemen); and up to $16 million in the African sub-region of Ethiopia, Mozambique, Rwanda, and Zambia. USDOL may award one or more cooperative agreements to one, several, or a partnership of more than one organization that may apply to implement the program. A Grantee must obtain prior USDOL approval for any sub-contractor before award of the cooperative agreement.

III. Eligibility Information

A. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based or community-based organization, capable of successfully developing and implementing education programs for working children or children at-risk of entering exploitive work in the regions/countries of interest is eligible to apply. Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in the regions/countries of interest, particularly local and regional NGOs, including faith-based and community-based organizations. In the case of partnership applications, a lead organization must be identified. An applicant must demonstrate a regional/country presence, independently or through a relationship with another organization(s) with regional/country presence, which gives it the ability to initiate program activities upon award of the cooperative agreement. Applicants applying for more than one region must submit a separate application for each region. If applications for the African sub-region and the MENA region are combined, they will not be considered. (All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (Office of Management and Budget—OMB No. 1225–0083), which is available online at *http://www.dol.gov/ILAB/grants/sga0409/bkgrdSGA0409.htm*). The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under the criteria outlined in the Application Review Information section of this solicitation, section V(A).

Please note that to be eligible, cooperative agreement applicants classified under the Internal Revenue Code as a 501(c)(4) entity (see 26 U.S.C. 501(c)(4)) may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, codified at 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, or loan.

B. Cost Sharing or Matching

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources (from sources other than Federal funds) and in-kind contributions is strongly encouraged and is a ranking factor worth five additional points, as described in section V(A)(4).

C. Other Eligibility Criteria

In accordance with 29 CFR part 98, entities that are debarred or suspended shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation. Past performance of organizations that have implemented or are implementing Child Labor Education Initiative projects or activities for USDOL will be taken into account in the review of technical applications. Past performance will be rated by the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL communications regarding deliverables and cooperative agreement or contractual requirements. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

With regard to legal rules pertaining to inherently religious activities by organizations that receive Federal Financial Assistance, neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of cooperative agreement recipients and must be employed by Grantees in the selection of subawardees.

The U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. Funds awarded under this solicitation may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities.

IV. Application and Submission Information

A. Address To Request Application Package

This solicitation contains all of the necessary information and forms needed to apply for cooperative agreement funding. This solicitation is published as part of this **Federal Register** notice, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html.*

B. Content and Form of Application Submission

One (1) blue ink-signed original, complete application in English plus two (2) copies (in English) of the application, must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference Solicitation 04–09, Washington, DC 20210, not later than 4:45 p.m. Eastern Time, July 6, 2004. Applicants may submit applications for one or both regions. In the case where an applicant is interested in applying for a cooperative agreement in both regions, a separate application must be submitted for each region.

The application must consist of two (2) separate parts, as well as a table of contents and an abstract summarizing the application in not more than two (2) pages. The table of contents and abstract are *not* included in the 45-page limit for part II (see below).

Part I of the application, the Program Design/Budget-Cost Proposal, must contain the Standard Form (SF) 424, Application for Federal Assistance and Sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ILAB/grants/sga0409/bkgrdSGA0409.htm.* Copies of these forms are also available online from the General Services Administration Web site at *http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1*

B8F985256A72004C58C2/ $file/ sf424.pdf and *http://contacts.gsa.gov/ webforms.nsf/0/5AEB1FA6FB3B83238 5256A72004C8E77/$file/Sf424a.pdf.* The individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant. The budget/cost proposal must be written in 10–12 pitch font size.

Part II is a technical application that identifies and explains the proposed program and demonstrates the applicant's capabilities to carry out that proposal. The technical application must identify how it will carry out the Statement of Work (section I(A)(2) of this solicitation) and address each of the Application Review Criteria found in section V(A).

The Part II technical application must not exceed 45 single-sided (8½" x 11"), double-spaced, one inch margin, 10 to 12 pitch typed pages for each region, and must include responses to the application evaluation criteria outlined in Section V(A) of this solicitation. Part II must include a project design document submitted in the format shown in Appendix A, and discussed further in Section VI(C)(1). The application must include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

Applications will only be accepted in English. To be considered responsive to this solicitation, the application must consist of the above-mentioned separate parts. *Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.* Standard forms and attachments *are* not included in the 45-page limit for Part II. However, additional information not required under this solicitation will not be considered.

C. Submission Dates, Times, and Address

Applications must be delivered by 4:45 p.m. Eastern Time, July 6, 2004, to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: Solicitation 04–09, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications sent by delivery services other than the United States Postal Services, such as Federal Express or UPS, will be accepted; however, the applicant bears the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after the submission date and time will not be considered unless it is received before the award is made and:

1. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at USDOL at the address indicated;

2. It was sent by registered or certified mail not later than the fifth calendar day before July 6, 2004; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to July 6, 2004.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper. The only acceptable evidence to establish the time of receipt at USDOL is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence of receipt maintained by that office. It is recommended that you confirm receipt of your application with your delivery service.

Confirmation of receipt can be obtained from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington DC area can be slow and erratic due to concerns involving contamination. All applicants must take this into consideration when preparing to meet the application deadline.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

E. Funding Restrictions

1. In addition to those specified under OMB Circular A–122, the following costs are also unallowable:

a. Construction with funds under this cooperative agreement should not exceed 10 percent of the project budget's direct costs and should be, preferably, limited to improving existing school infrastructure and facilities in the project's targeted communities. USDOL encourages applicants to cost-share and/or leverage funds or in-kind contributions from local partners (but not from other Federal awards) when proposing construction activities in order to ensure sustainability.

b. Under this cooperative agreement, vocational training for adolescents and income generating alternatives for parents are allowable activities. However, federal funds under this cooperative agreement cannot be used to provide micro-credits, revolving funds, or loan guarantees.

c. Awards will not allow reimbursement of pre-award costs.

2. The following activities are also unallowable under this solicitation:

a. Under this cooperative agreement, awareness raising and advocacy activities cannot include lobbying or fund-raising (*see* OMB Circular A–122).

b. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their sub-contractors, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their sub-contractors, that receive U.S. Government funds to fight trafficking in persons cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. It is the responsibility of the primary Grantee to ensure its sub-contractors meet these

criteria. (The U.S. Government is currently developing language to specifically address Public International Organizations' implementation of the above anti-prostitution prohibition. If a project under this SGA is awarded to such an organization, appropriate substitute language for the above prohibition will be included in the project's cooperative agreement).

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov.*

V. Application Review Information

A. Application Evaluation Criteria

Technical panels will review applications written in the specified format (see section I, section IV(B) and Appendix A) against the various criteria on the basis of 100 points. Up to five additional points will be given for the inclusion of non-Federal or leveraged resources as described in section V(A)(4). Applicants are requested to prepare their technical proposal (45 page maximum) on the basis of the following rating factors, which are presented in the order of emphasis that they will receive, and the maximum rating points for each factor.

Program Design/Budget-Cost Effectiveness—45 points.
Organizational Capacity—30 points.
Management Plan/Key Personnel/ Staffing—25 points.
Leveraging Resources—5 extra points.

1. Project/Program Design/Budget-Cost Effectiveness (45 Points)

This part of the application constitutes the preliminary project document described in section I(B), section VI(C)(1), and outlined in Appendix A. The applicant's proposal must describe in detail the proposed approach to comply with each requirement.

This component of the application must demonstrate the applicant's thorough knowledge and understanding of the issues, barriers and challenges involved in providing education to children engaged in or at-risk of engaging in exploitive child labor, particularly its worst forms; best-practice solutions to address their needs; and the policy and implementing environment in the selected region. When preparing the project document outline, the applicant must at a minimum include a description of:

a. *Children Targeted*—The applicant must identify which and how many children are expected to benefit from the project, including the sectors in which they work, geographical location, and other relevant characteristics. Children are defined as persons under the age of 18 who have been engaged in the worst forms of child labor as defined by ILO Convention 182, or those under the legal working age of the country and who are engaged in other hazardous and/or exploitive activities.

b. *Needs/Gaps/Barriers*—The applicant must describe the specific gaps/educational needs of the children targeted that the project will address.

c. *Proposed Strategy*—The applicant must discuss the proposed regional strategy to address gaps/needs/barriers of the children targeted and its rationale.

d. *Description of Activities*—The applicant must provide a detailed description of proposed activities that relate to the gaps/needs/barriers to be addressed, including training and technical assistance to be provided to project staff, host country nationals, and community groups involved in the project. The proposed approach is expected to build upon existing activities, government policies, and plans, and avoid needless duplication.

e. *Work Plan*—The applicant must provide a detailed work plan and timeline for the proposed project, preferably with a visual such as a Gantt chart. Applicants whose strategies include the provision of direct delivery of education are also encouraged to enroll one-quarter of the targeted children in educational activities during the first year of project implementation.

f. *Program Management and Performance Assessment*—The applicant must describe: (1) How management will ensure that the goals and objectives will be met; (2) how information and data will be collected and used to demonstrate the impacts of the project; and (3) what systems will be put in place for self-assessment, evaluation and continuous improvement. *Note to All Applicants:* USDOL has already developed common Child Labor Education Initiative indicators and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award so that they do not need to set up this type of system from scratch. Guidance on common indicators will be provided after award, thus applicants should focus their program management and performance assessment responses toward the development of their project's monitoring strategy in support of the four goals of the Child Labor Education Initiative set out in Section I(A)(1). For more information on the Child Labor Education Initiative's common indicators, please visit *http://www.clear-measure.com.*

g. *Budget/Cost Effectiveness*—The applicant must show how the budget reflects program goals and design in a cost-effective way to reflect budget/performance integration. The budget must be linked to the activities and outputs of the work plan listed above. This section of the application is expected to explain the costs for performing all of the requirements presented in this solicitation, and for producing all required reports and other deliverables. Costs must include labor, equipment, travel, annual audits, evaluations, and other related costs. Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities. When developing their applications, applicants must allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct administrative costs. Preference may be given to applicants with realistically low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. All costs should be reported, as they will become part of the cooperative agreement upon award. In their cost proposal, applicants must reflect a breakdown of the total administrative costs into direct administrative costs and indirect administrative costs. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars).

Applicants are encouraged to discuss the possibility of exemption from customs and Value Added Tax (VAT) with host government officials during the preparation of an application for this cooperative agreement. While USDOL encourages host governments to not apply custom or VAT taxes to USDOL-funded programs, some host governments may nevertheless choose to assess such taxes. USDOL may not be able to provide assistance in this regard. Applicants should take into account such costs in budget preparation. If major costs are omitted, a Grantee may not be allowed to include them later.

2. Organizational Capacity (30 Points)

Under this criterion, the applicant must present the qualifications of the organization(s) implementing the program/project. The evaluation criteria in this category are as follows:

a. *International Experience*—The organization applying for the award has international experience implementing basic, transitional, non-formal or vocational education programs that

address issues of access, quality, and policy reform for vulnerable children including children engaged in or at-risk of exploitive child labor, preferably in the regions and countries of interest.

b. *Regional/Country Presence*—An applicant, or its partners, must be formally recognized by the host government(s) using the appropriate mechanism, *e.g.*, Memorandum of Understanding, or local registration of organization. An applicant must also demonstrate a regional/country presence, independently or through a relationship with another organization(s) with regional/country presence, which gives it the ability to initiate program activities upon award of the cooperative agreement, as well as the capability to work directly with government ministries, educators, civil society leaders, and other local faith-based or community organizations. For applicants that do not have independent regional/country presence, documentation of the relationship with the organization(s) with such a presence must be provided. Applicants are strongly encouraged to work collaboratively with local partners and organizations.

c. *Fiscal Oversight*—The organization shows evidence of a sound financial system. The results of the most current independent, external financial audit must accompany the application as an attachment (and will not count in the maximum page requirement), and applicants without one will not be considered.

d. *Coordination*—If two or more organizations are applying for the award in the form of a partnership, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. The applicants must also identify the lead organization and submit the partnership or sub-contract agreement as an attachment to be counted in the maximum page requirement.

e. *Experience*—The application must include information about previous grants, cooperative agreements, or contracts of the applicant that are relevant to this solicitation including:

(1) The organizations for which the work was done;

(2) A contact person in that organization with their current phone number;

(3) The dollar value of the grant, contract, or cooperative agreement for the project;

(4) The time frame and professional effort involved in the project;

(5) A brief summary of the work performed; and

(6) A brief summary of accomplishments.

This information on previous grants, cooperative agreements, and contracts held by the applicant must be provided in appendices and will not count in the maximum page requirement.

Note to all applicants: Past performance of organizations that have implemented or are implementing Child Labor Education Initiative projects or activities for USDOL will be taken into account in the review of technical applications (*See* section III(1)(C) above).

3. Management Plan/Key Personnel/ Staffing (25 Points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to assure that they meet the required qualifications.

Note to All Applicants: USDOL strongly recommends that key personnel allocate at least 50 percent of their time to the project and be present within the region, specifically in one of the project countries. USDOL prefers that key personnel positions not be combined unless the applicant can propose a cost-effective strategy that ensures that all key management and technical functions (as identified in this solicitation) are clearly defined and satisfied. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of cooperative agreement award. Applicants must submit these letters as an Appendix B to the application (these will not count toward the page limit).

a. *Key personnel*—The applicant must identify all key personnel proposed to carry out the requirements of this solicitation. Information provided on the experience and educational background of personnel should include the following:

(1) The identity of key personnel assigned to the project. "Key personnel" are staff (Project Director, Education Specialist, and Monitoring and Evaluation Officer) who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have hours reduced without the approval of the Grant Officer.

(2) The educational background and experience of all staff to be assigned to the project.

(3) The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

(4) The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control by the Grantee should be clearly delineated to ensure responsiveness to the needs of USDOL.

For each region for which an application is submitted, the applicant must designate the key personnel listed below. If key personnel are not designated, the application will not be considered. In this section, the following information must be furnished:

(a) A *Project Director* to oversee the project and be responsible for implementation of the requirements of the cooperative agreement. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children; and monitoring and evaluation of basic education projects. Consideration will be given to candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates must also have knowledge of exploitive child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from exploitive child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language(s)

spoken in the target countries is preferred.

(b) An *Education Specialist* who is expected to provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with exploitive child labor/education policy and monitoring and evaluation is an asset. Working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target region/countries.

(c) A *Monitoring and Evaluation Officer* who must serve at least part-time and oversee the implementation of the project's monitoring and evaluation strategies and requirements. This person should have at least three years progressively responsible experience in the monitoring and evaluation of international development projects, preferably in education and training or a related field. Related experience can include strategic planning and performance measurement, indicator selection, quantitative and qualitative data collection and analysis methodologies, and knowledge of the Government Performance and Results Act (GPRA). Individuals with a demonstrated ability to build capacity of the project team and partners in these areas will be given special consideration.

b. *Other Personnel*—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation.

c. *Management Plan*—The management plan must include the following:

(1) A description of the functional relationship between elements of the project's management structure; and

(2) The responsibilities of project staff and management and the lines of authority between project staff and other elements of the project.

d. *Staff Loading Plan*—The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks should be charted to show time required to perform them by months or weeks.

e. *Roles and Responsibilities*—The applicant must include a resume and description of the roles and responsibilities of all proposed personnel. Resumes must be attached in an appendix and will not count toward the maximum page limit. At a minimum, each resume must include: The individual's current employment status and previous work experience, including position title, duties, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed, *e.g.*, manager, team leader, and/or consultant. Indicate whether the individual is currently employed by the applicant, and (if so) for how long.

4. Leverage of Grant Funding (5 Points)

USDOL will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities, such as micro-credit, revolving funds, or loan guarantees, which are not directly allowable under the cooperative agreement. To be eligible for the additional points, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc.

B. Review and Selection Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. Each complete application will be objectively rated by a technical panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission or the Grant Officer may establish a competitive or technically acceptable range from which qualified applicants will be selected. If deemed appropriate, the Grant Officer may call for the preparation and receipt of final revisions of applications, following which the evaluation process described above may be repeated, in whole or in part, to consider such revisions. The Grant Officer will make final selection determinations based on panel findings and consideration of factors that represent the greatest advantage to the government, such as geographic distribution of the competitive applications, cost, the availability of funds and other factors. The Grant Officer's determinations for awards under this solicitation are final.

Note to All Applicants: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support cooperative agreement implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. Award may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in target countries. USDOL is not obligated to make any awards as a result of this solicitation, and only the Grant Officer can bind USDOL to the provision of funds under this solicitation. Unless specifically provided in the cooperative agreement, USDOL's acceptance of a proposal and/or award of Federal funds does not waive any cooperative agreement requirements and/or procedures.

C. Anticipated Announcement and Award Dates

Designation decisions will be made, where possible, within 45 days after the deadline for submission of proposals.

VI. Award Administration Information

A. Award Notices

The Grant Officer will notify applicants of designation results as follows:

Designation Letter: The designation letter signed by the Grant Officer will serve as official notice of an organization's selection. The designation letter will be accompanied by a cooperative agreement and USDOL/ILAB's Management Procedures and Guidelines (MPG).

Non-Designation Letter: Any organization not designated will be notified formally of the non-designation and given the basic reasons for the determination.

Notification by a person or entity other than the Grant Officer that an organization has or has not been designated is not valid.

B. Administrative and National Policy Requirements

1. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of regulations and appropriations law) and the applicable OMB Circulars. If during project implementation a Grantee is found in violation of U.S. government law, the terms of the cooperative agreement awarded under this solicitation may be modified by USDOL, costs may be disallowed and recovered, the cooperative agreement may be terminated, and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles. Grantees must also submit to an annual independent audit, and costs for such an audit should be included in direct or indirect costs, whichever is appropriate.

The cooperative agreements awarded under this solicitation are subject to the following administrative standards and provisions, and any other applicable standards that come into effect during the term of the grant agreement, if applicable, to a particular Grantee:

a. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

c. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

d. 29 CFR part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

e. 29 CFR part 93—New Restrictions on Lobbying.

f. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

g. 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

h. 29 CFR part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

i. 29 CFR part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Applicants are reminded to budget for compliance with the administrative requirements set forth. This includes the cost of performing administrative activities such as annual financial audits, closeout, mid-term and final evaluations, document preparation, as well as compliance with procurement and property standards. Copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov*.

Grantees should be aware that terms outlined in this solicitation, the cooperative agreement, and the MPGs are applicable to the implementation of projects awarded under this solicitation.

2. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876, as amended, 13230, 12928 and 13021, as amended, Grantees are strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities. To the extent possible, sub-contracts awarded after the cooperative agreement is signed must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL/ILAB.

3. Key Personnel

As stated in section V(A)(3), the application must list the individual(s) who has/have been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel (Project Director, Education Specialist, and Monitoring and Evaluation Officer) will be available to begin work on the project no later than three weeks after award. Grantees agree to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for this individual(s) to continue work on the project as planned. A Grantee may nominate substitute key personnel and submit the nominations to the GOTR; however, a Grantee must obtain prior approval from the Grant Officer for all changes to key personnel (Project Director, Education Specialist, and Monitoring and Evaluation Officer). If the Grant Officer is unable to approve the key personnel change, he/she reserves the right to terminate the cooperative agreement or disallow costs.

4. Encumbrance of Cooperative Agreement Funds

Cooperative agreement funds may not be encumbered/obligated by a Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only specified commitments for which a need existed during the cooperative agreement period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

All equipment purchased with project funds must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantees are expected to determine how to best allocate equipment purchased with project funds in order to ensure sustainability of efforts in the project's implementing areas.

5. Site Visits

USDOL, through its authorized representatives, has the right, at reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of a Grantee or a sub-contractor(s) under this cooperative agreement, a Grantee must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of government representatives in the performance of their duties. All site visits and evaluations are expected to be performed in a manner that will not unduly delay the implementation of the project.

C. Reporting and Deliverables

In addition to meeting the above requirements, a Grantee is expected to monitor the implementation of the program, report to USDOL on a quarterly basis, and undergo evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the cooperative agreement. The project

budget must include funds to: plan, implement, monitor, and evaluate programs and activities (including mid-term and final evaluations and annual audits); conduct studies pertinent to project implementation; establish education baselines to measure program results; and finance travel by field staff and key personnel to meet annually with USDOL officials in Washington DC. Applicants based both within and outside the United States should also budget for travel by field staff and other key personnel to Washington DC at the beginning of the project for a post-award meeting with USDOL. Indicators of project performance will also be proposed by a Grantee and approved by USDOL in the Performance Monitoring Plan as discussed in section VI (C) (4) below. Unless otherwise indicated, a Grantee must submit copies of all required reports to ILAB by the specified due dates. *Note to All Applicants*: USDOL provides its Grantees with training and technical assistance to refine the quality of deliverables. This assistance includes workshops to refine project design and improve performance monitoring plans, and reporting on common Child Labor Education Initiative indicators.

Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs. Specific deliverables are the following:

1. Preliminary and Final Project Design Document

As stated in section IV(B), applications must include a preliminary project design document in the format described in Appendix A, with design elements linked to a logical framework matrix. (**Note:** The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical Child Labor Education Initiative project is available at *http://www.dol.gov/ILAB/grants/sga0409/bkgrdSGA0409.htm.)*. The project document must include a background/justification section, project strategy (goal, purpose, outputs, activities, performance indicators, means of verification, assumptions), project implementation timetable and project budget. The narrative must address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section (section V(A)(1) above).

Within six months after the time of the award, the Grantee must deliver the final project design document, based on the application written in response to this solicitation, including the results of additional consultation with stakeholders, partners, and ILAB. The final project design document is expected to also include sections that address coordination strategies, project management and sustainability.

2. Progress and Financial Reports

The format for the progress reports will be provided in the MPG distributed after the award. Grantees must furnish a typed Technical Progress Report and a Financial Status Report (SF269) to USDOL/ILAB on a quarterly basis by 31 March, 30 June, 30 September, and 31 December of each year during the cooperative agreement period. Also, a copy of the Federal Cash Transactions Report (SF 272) should be submitted to ILAB upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

3. Annual Work Plan

Grantees must develop an annual work plan within six months of project award for approval by ILAB so as to ensure coordination with other relevant social actors throughout the region. Subsequent annual work plans must be delivered no later than one year after the previous one.

4. Performance Monitoring and Evaluation Plan

Grantees must develop a performance monitoring and evaluation plan, in collaboration with USDOL/ILAB, including beginning and ending dates for the project, performance indicators and methods and cost of data collection, planned and actual dates for mid-term review, and final end of project evaluations. The performance monitoring plan must be developed in conjunction with the logical framework project design and common indicators for GPRA reporting selected by ILAB, as described in section V(A)(1)(f). The plan must also include a limited number of key performance indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection is expected to be tied to the performance indicators of the project design document and the performance monitoring plan. A monitoring and evaluation plan must be submitted to ILAB within six months of project award.

5. Project Evaluations

Grantees and the GOTR will determine on a case-by-case basis whether mid-term evaluations will be conducted by an external evaluation team. All final evaluations must be external and independent in nature. A Grantee must respond in writing to any comments and recommendations resulting from the mid-term evaluation. The budget must include the projected cost of mid-term and final evaluations.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*.

VIII. Other Information

A. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL/ILAB, for approval, all media-related, awareness-raising, and educational materials developed by the Grantee or its sub-contractors before they are reproduced, published, or used. USDOL/ILAB considers that materials include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. USDOL/ILAB will review materials for technical accuracy.

B. Acknowledgment of USDOL Funding

USDOL has established procedures and guidelines regarding acknowledgement of funding. USDOL requires, in most circumstances, that the following be displayed on printed materials:

"Funding provided by the United States Department of Labor under Cooperative Agreement No. E–9–X–X–XXXX."

With regard to press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part under this cooperative agreement, all Grantees are required to consult with USDOL/ILAB on: acknowledgment of USDOL funding; general policy issues regarding international child labor; and informing USDOL, to the extent possible, of major press events and/or interviews. More detailed guidance on acknowledgement of USDOL funding will be provided upon award to the Grantee(s) in the cooperative agreement and MPG.

In consultation with USDOL/ILAB, USDOL will be acknowledged in one of the following ways:

1. The USDOL logo may be applied to USDOL-funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice

reports, and other publications of global interest. A Grantee must consult with USDOL/ILAB on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL/ILAB has given a Grantee written permission to use the logo on the item.

2. The following notice must appear on all documents: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

C. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 26th day of May, 2004.

Johnny Arnold,

Acting Grant Officer.

Appendix A: Project Document Format

Executive Summary

1. Background and Justification
2. Target Groups
3. Program Approach and Strategy
   - 3.1 Narrative of Approach and Strategy (linked to Logical Framework matrix, Annex A)
   - 3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework in Annex A)
   - 3.3 Budget (with cost of Activities linked to Outputs-Based Budget in Annex B)
4. Project Monitoring and Evaluation
   - 4.1 Indicators and Means of Verification
   - 4.2 Baseline Data Collection Plan
5. Institutional and Management Framework
   - 5.1 Institutional Arrangements for Implementation
   - 5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities
   - 5.3 Other Donor or International Organization Activity and Coordination
   - 5.4 Project Management Organizational Chart
6. Inputs
   - 6.1 Inputs provided by USDOL
   - 6.2 Inputs provided by the Grantee
   - 6.3 National and/or Other Contributions
7. Sustainability

Annex A: Full presentation of the Logical Framework matrix

Annex B: Outputs-Based Budget example

(A worked example of a Logical Framework matrix, an Outputs-Based Budget, and other background documentation for this solicitation are available from the USDOL/ILAB Web site at *http://www.dol.gov/ILAB/grants/sga0409/bkgrdSGA0409.htm.)*

Appendix B: Country Background Section

MENA Region

Lebanon

In 2000, UNICEF estimated that 45.3 percent of children ages 6 to 14 years were working in Lebanon inside and outside their homes for paid and unpaid work. The highest proportions of working children exist in South Lebanon and in the Beqaa region, although the work of children is also prevalent in Northern Lebanon and in the suburbs of Beirut. UNICEF estimates that girls represent over half of the children ages 6 to 14 who are engaged in work. Non-Lebanese children, including Syrian nationals and Palestinian refugees, constitute 10 to 20 percent of children working in the formal sector, but a larger portion of children are working on the street.

Children between ages 6 to 14 years are employed in metal works, handicraft and artisan establishments, in sales, construction work, and the operation of machinery. Approximately 11 percent of working children are employed in agriculture. In 2000, national reports estimated that 25,000 children ages 7 to 14 were working in tobacco cultivation. Ninety percent of children working in tobacco cultivation are unpaid, some having entered the labor force as early as 3 years old. Some of these children are forced by their parents to work in the fields or beg in the streets to help support their families. The commercial sexual exploitation of children is reported to occur, although it is not considered by the general population to be a systemic or widespread problem.

Though exploitive child labor is a problem in Lebanon, efforts have been made by the government to address the problem. The Labor Code of 1996 established the minimum age for employment at 14 years. The Labor Code prohibits children ages 13 and younger from engaging in any kind of work. Children ages 14 to 17 may be employed under special conditions relating to matters such as working hours and conditions, and type of work. The Ministry of Labor is responsible for the enforcement of child labor laws through its labor inspectors.

Lebanese law adopted in 1998 provides for free and compulsory education; however, education is only compulsory for 5 years (through grade 5 or age 12) and students are responsible for registration and other fees, even in State-run public institutions (although all students in public schools have been exempted from registration fees in the past two years). Since the civil war, educational standards in the "free" public institutions have declined, and demand for entrance into private fee-paying schools has progressively decreased due to the deteriorating economic situation, which has in turn led to declining living standards for a large fraction of the population. State-run schools lack appropriate facilities, equipment and trained staff. Approximately 45 percent of children stop schooling before completing basic education, or grade 6. Since the minimum age for employment is 14 years, children who drop out of school after the compulsory primary level are at-risk of becoming involved in exploitive child labor.

Exploitive child labor adversely affects the education of working children in Lebanon, leading to work-related absenteeism and contributing to high dropout rates before reaching the secondary-school level. The government has received technical and financial support and credit from various international bodies, such as UNICEF and the World Bank, in order to enroll working children ages 14 to 18 in a continuing education program, and to restore the credibility of the public education system through improvements in quality, efficiency, and increased access, respectively. In 2002, the Government of Lebanon launched an Education for All Forum, which is expected to develop the country's national action plan.

The *ILO–IPEC National Program for the Elimination of Child Labor in Lebanon,* funded by the French government in 2000, was the first program of its kind in Lebanon to address mainstreaming child labor at the national institutional level and through direct interventions to withdraw children from exploitive labor. The national program included 10 small-scale direct action programs, and served as a model of collaboration between ILO–IPEC, various Ministries, district administrators, municipalities, employers' organizations, and local NGOs working together to combat exploitive child labor while emphasizing the role of education to retain potential dropouts.

Yemen

According to the 1999 Yemen Poverty Monitoring Survey conducted by the Central Statistical Office, the number of children ages 6 to 14 engaged in work in Yemen was estimated to be 700,000 or about 12 percent of the age group. An additional 37 percent of children from this age group are reportedly neither involved in work nor attending school. It is also estimated that 120,000 children ages 6 to 8 years work either inside or outside the home. Rural child workers account for 94 percent of the total number of working children, with the overwhelming majority of children working in the agricultural sector and for their families. Children living in rural areas are more than five times as likely to work as children in urban areas. The probability of a child working increases with age. Girls are more likely than boys to be involved in work and are less likely than boys to attend school full-time.

Though exploitive child labor is widespread in Yemen and the prevalence of children engaged in work appears to be rising, efforts have been made by the Government of Yemen to address the problem through a commitment to education for all and strengthening safety nets by reaching out to the most disadvantaged groups. A new Child Rights Law was issued in 2002 and sets the general minimum working age at 14 years and at 15 years for industrial work. The law extends legal protection to child workers, but it excludes children working for their families, a category that accounts for the overwhelming majority (87 percent) of child workers.

The educational development priorities of the Government of Yemen are detailed in the

Basic Education Development Strategy, which the Government of Yemen developed in 2000 in collaboration with the World Bank to improve access to education in rural areas, reduce school cost, and improve quality of education, and which includes child labor in a special component for children at-risk. Though education is compulsory for children from ages 6 to 15 years and school enrollment rates have improved over the past decade, further expansion of enrollment is posing a tremendous challenge. Over two million children remain out of school and a large gender gap in enrollment in favor of boys persists.

The government has received technical and financial support from various international bodies, such as UNICEF, UNDP and the World Bank, in order to give highest priority to primary education and increased access to education for girls in remote rural areas. USAID has recently provided funding to support a basic education project in the rural regions of Al Jawf, Amran, Mareb, Saadah, and Shabwah. In 2002, Yemen became eligible to receive funding under the World Bank's *Education for All Fast Track Initiative* that aims to provide all children with primary school education by the year 2015.

Child labor is not directly mentioned in Yemen's main development plans. However, the *ILO–IPEC National Program on the Elimination of Child Labor in Yemen*, funded by USDOL in 2000, is the first program of its kind in Yemen that addresses mainstreaming child labor at the national institutional level and through direct interventions to withdraw children from exploitive labor. One of the main objectives of the national program is putting in place a *National Policy and Program Framework on Child Labor* by the end of the program in November 2004.

Many government institutions have been engaged in addressing exploitive child labor through the national program, including trade unions and employers' organizations, NGOs and community groups. In March 2003, a research initiative of the ILO, UNICEF, and World Bank produced a report that presents strategic options for addressing child labor and suggests prioritization of interventions.

Other development plans such as the *Yemen Strategic Vision 2025, Second Five-year Plan for Economic and Social Development (2001–2005)*, and the *Poverty Reduction Strategy Paper (2003–2005)* provide a framework to national efforts directed at the root causes of exploitive child labor including addressing poverty, lack of schooling, low access to basic services, and various other issues contributing to exploitive child labor. One of the main challenges and opportunities for implementing a Child Labor Education Initiative in Yemen is finding innovative ways for families and communities to generate income to offset the loss of contributions to family survival resulting from their children entering and persisting in school. Leveraging social welfare programs and projects such as the *Social Welfare Fund, Social Fund for the Development, and Public Works Project* could benefit the target population. Child Labor Education Initiative efforts to address exploitive child labor through education in Yemen should operate in tandem with the Government of Yemen's overall education and poverty alleviation policies and programs.

African Sub-Region

Ethiopia

In 2003, there were an estimated 30 million children in Ethiopia, 1.2 million of whom had lost their mother or both parents to HIV/AIDS. This number is expected to rise to over 2 million by 2010. There are also an estimated 230,000 children under 14 living with HIV/AIDS in Ethiopia. HIV/AIDS orphans in Ethiopia are increasingly found living in urban environments and are vulnerable to working in the worst forms of child labor. They also face limited access to food, healthcare and basic education "and may be traumatized due to their ordeals. living without parents or caregivers. Official government estimates put the number of street children at 150,000 to 200,000, many of whom are suspected orphans. As a preventive strategy to protect HIV/AIDS-affected children from exploitive labor, these children must have access to quality basic education.

According to the 2001 Ethiopian Child Labor Survey Report, approximately 85 percent of children ages 5 to 14 years were involved in productive or household activities. In rural areas, children are often found working for their families in agriculture and tending to livestock. In urban areas, children work in domestic work, street peddling, construction, manufacturing, and in the market. Street children often work in the informal sector as shoe shiners and beggars, and young girls are increasingly engaged in commercial sexual exploitation. Internal trafficking of children for forced labor and external trafficking of children for commercial sexual exploitation is also reportedly a problem.

The government provides free and compulsory education, but there are not enough schools or teachers to accommodate all children. Access to education in rural areas is especially limited. Girls' enrollment and completion rates remain lower than boys. Teacher absenteeism due to HIV/AIDS has had an especially negative impact on quality of education. HIV/AIDS-affected children must often work long hours to help their family or caregivers. Orphans living with relatives are usually the first children in the family to be denied an education. Children affected by HIV/AIDS may have insufficient opportunities to enroll in primary education. There are few opportunities in Ethiopia for vocational, non-formal and technical education.

The Government of Ethiopia is an associated country of ILO-IPEC and has ratified ILO Conventions 138 and 182. The Ministry of Labor and Social Affairs is the chair of the National Steering Committee against Sexual Abuse and Exploitation of Children. The government collaborates with several international organizations on education-related projects.

Mozambique

HIV/AIDS prevalence rates in Mozambique have increased dramatically since 1992. In 2001, the estimated number of persons between the ages of 15 to 49 years infected with HIV was 1.1 million. In the same year, 420,000 children under the age of 15 were estimated to have lost one or both parents to AIDS. These projections indicate a growing burden on remaining caregivers and increased vulnerability among orphaned children, many of whom may resort to hazardous labor in an effort to support themselves, siblings, and ill family members. There is a need to provide these vulnerable children with quality basic educational opportunities as a strategy to combat their participation in exploitive labor.

In 2001, the ILO estimated that 32.1 percent of children ages 10 to 14 years in Mozambique were working. As in other African countries, many traditional Mozambicans view the work of children as necessary and a natural part of a child's education and development. However, much of the work done by children in Mozambique can be hazardous to their healthy development.

In a child labor rapid assessment survey conducted in 1999, the Ministry of Labor and UNICEF described several specific worst forms of child labor as being particularly prevalent in Mozambique: domestic work, trading and hawking, agriculture and fishing, and commercial sexual exploitation. The type of labor that children engage in tended to differ according to gender. Boys tended to work in informal trading on the streets, in markets and at bus stations and bus stops. Many of them also worked in commercial agriculture, particularly in cotton fields in the Cabo Delgado and Nampula provinces and in fishing and forestry. Girls tended to work as domestic workers and traders, as well as in commercial agriculture. In some cases, girls were involved in commercial sexual exploitation. There have also been reports of child trafficking and evidence of children working in factories and small mining. In addition to the hazards children are exposed to while carrying out these jobs, the work children engage in often conflicts with schooling.

Education is compulsory and free through the age of 12, but there is a matriculation fee for each child, and children are responsible for purchasing books and school supplies. Enforcement of compulsory education laws is inconsistent due to the lack of resources and the lack of schools. In 2000, the gross primary enrollment rate was 91.5 percent, and the net primary enrollment rate was 54.4 percent. The high gross enrollment rate reflects the number of overage children enrolled in their respective grade, and the relatively low net enrollment rate reflects the need for increased access to education. Enrollment and drop out rates differ according to geographic location and gender. Children, particularly girls, living in the Northern and Central provinces and rural areas tend to suffer disproportionably.

The government of Mozambique has ratified ILO Conventions 138 and 182. The government has worked closely with UNICEF on a Draft Strategy for the Eradication of Child Labor, and has implemented several programs and projects aimed at protecting children from sexual exploitation and trafficking.

Rwanda

In 1994, at least 800,000 people were killed in a genocide. Nearly two million more fled to neighboring countries. The genocide and massive population displacement resulted in a dramatic increase in the number of orphans and vulnerable children in need of support, and a subsequent period of civil conflict in 1997 and 1998 further exacerbated the problem. In addition, the systematic rape and the purposeful transmission of HIV/AIDS was used as a weapon of genocide in order to infect and eventually kill a population after the war ended. This legacy of HIV/AIDS carries with it a particular stigma in Rwanda. Between the genocide and ongoing public health concerns, Rwanda has been hard-hit by the HIV/AIDS epidemic. In 2001, the HIV/AIDS adult prevalence rate was 8.9 percent. There are 500,000 Rwandans living with the disease, 13 percent of whom (or 65,000) are children under 15. These children are extremely vulnerable to entering exploitive labor and need to have access to quality basic education.

Today, approximately one million children in Rwanda are orphans. Of that total, an estimated 264,000 children are HIV/AIDS orphans. As many as 13 percent of all households are being run by children (between 200,000 and 300,000 children). And as many as 9,000 children are living or working on the streets. Orphaned children engage in various forms of labor, including domestic labor, sexual exploitation, agricultural work on tea/coffee/pyrethrum plantations, and work in quarries and mines. Nationally, 41.3 percent of children between the ages of 10 and 14 work, but anecdotal evidence suggests that dire household poverty forces the majority of orphans to work in some capacity.

Education is free and compulsory from the ages of 7 to 12, but in practice, grants designed to eliminate school fees are not yet available to many schools due to slow implementation of the government policy. Other costs of education remain, including purchasing uniforms and school supplies, and possible contributions to the school to cover repairs or teachers' expenses. Public schools lack basic supplies and cannot accommodate all primary age school children, and private schools are inaccessible or too costly for the majority of the population. Ninety-five percent of child-headed households lack adequate access to education due to prohibitive costs and conflicting responsibilities, among other limitations. On a national level, the primary school completion rate is extremely low, and the secondary school enrollment rate is below 10 percent. Over half of primary school teachers lack basic qualifications. Opportunities for non-formal education or vocational training are extremely limited.

The Government of Rwanda is an associated country of ILO–IPEC and has ratified ILO Conventions 138 and 182. The Ministry for Local Administration, Information and Social Affairs has opened safe houses for street children at-risk of entering exploitive labor. The government has established a list of the worst forms of child labor in Rwanda, and is working with UNICEF to address some of these worst forms.

Zambia

An estimated 800,000 children in Zambia have lost one or both parents to HIV/AIDS. These orphans are more likely to be found living in urban environments with relatives or on the streets where they must work to make a living. A majority of street children on the streets of Lusaka are orphans. Orphans are less likely to be attending school, may experience severe psychosocial trauma due to the loss of their parents, and may be in danger of both physical and sexual abuse. They have limited access to basic necessities including food, water, and health care, and often must resort to working in dangerous labor conditions to survive.

The Zambian Central Statistics Office estimated in 1999 that 11.5 percent of children ages 5 to 14 years were working, of which approximately 90 percent were engaged in agricultural work. Only one quarter of these children combined work with attendance at school. Children are engaged in a variety of other occupations as well, including stone crushing, fishing, manufacturing, domestic service, and vending and food production. Young girls are increasingly found working in prostitution leaving them extremely vulnerable to contracting the HIV/AIDS virus. Street children also engage in informal work activities, such as carrying parcels or guarding cars.

In 2002, the Ministry of Education instituted free primary education for 7 years, although it is not compulsory. Some rural communities have not fully implemented this policy and children who cannot contribute fees to the school or who cannot afford to buy a uniform are still being turned away from entering the classroom. Substantial barriers to quality basic education remain and the number of schools and teachers are insufficient to meet the increasing demand for education. Teacher absenteeism due to HIV/AIDS has had an especially negative impact on quality of education. Orphans and vulnerable children face other difficulties, such as long work hours that prevent school attendance, stigma and abuse, and cost of school materials. Quality of education in some schools in Zambia continues to be substandard.

The Government of Zambia is a member country of ILO–IPEC and has ratified ILO Conventions 138 and 182. A National Plan of Action on Child Labor was developed in 2000 and approved by the government in December 2001. The government's National Policy on Children and Labor Market policy include chapters on child labor.

[FR Doc. 04–12525 Filed 6–2–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Resource Justification Model

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of collection of information for the Resource Justification Model (RJM). ETA intends to use the RJM to formulate budget requests for the unemployment insurance (UI) program from States' data and to allocate appropriated funds among the States.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Submit comments on or before August 2, 2004.

ADDRESSES: Send comments to Lauren C. Harrel, Room S4231, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2992 (this is not a toll-free number). E-mail address is *harrel.lauren@dol.gov* and fax number is (202) 693–2874.

FOR FURTHER INFORMATION CONTACT: Lauren C. Harrel, Room S4231, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2992 (this is not a toll-free number). E-mail address is *harrel.lauren@dol.gov* and fax number is (202) 693–2874.

SUPPLEMENTARY INFORMATION:

I. Background

ETA developed the RJM to obtain updated State UI program cost data. Although the RJM entails a substantial data collection effort, it provides ETA with current cost information to justify

budget requests for State UI program administration and allocate administrative funds equitably among States. State agencies submit detailed data by major cost categories in a structured format. This provides States with a means to provide ETA with their input to the budget process. Software now available to the States for data extraction from accounting systems is able to keep the data collection burden at a minimum.

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the proposed extension of the RJM collection. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the **ADDRESSES** section of this notice.

III. Current Actions

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Resource Justification Model.

OMB Number: 1205–0430.

Affected Public: State government.

Cite/Reference/Form/etc: Social Security Act, section 303(a)(b).

Total Respondents: 53 State workforce agencies.

Frequency: Annually.

Total Responses: 212.

Average Time per Response: 33.75 hours.

Estimated Total Burden Hours: 7,155.

Form/activity	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
Crosswalk	53	Annually	53	120	6,360
ACCT SUM	53	Annually	53	4	212
RJM 1–6	53	Annually	53	3	159
Narrative	53	Annually	53	8	424
Totals			212		7,155

Total Burden Cost (Capital/Startup): There are no capital or start-up costs for RJM.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 26, 2004.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 04–12526 Filed 6–2–04; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting

AGENCY: National Council on Disability (NCD).

TIME AND DATE: 10 a.m.–12 p.m., July 23, 2004.

PLACE: Ritz-Carlton, Pentagon City, 1250 Hayes Street, Arlington, Virginia.

STATUS: All parts of this meeting will be open to the public. Those interested in participating should contact the appropriate staff member listed below.

AGENDA: Roll call, announcements, reports, new business, adjournment.

FOR FURTHER INFORMATION CONTACT: Geraldine Drake Hawkins, Ph.D., Program Analyst, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

YOUTH ADVISORY COMMITTEE MISSION: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: May 27, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–12511 Filed 6–2–04; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement to Develop, Offer, and Evaluate an Instructor-Mediated Online Course To Train Library and Museum Personnel to Plan and Evaluate Outcomes-Based Projects

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and Humanities.

ACTION: Notification of availability.

SUMMARY: The Institute of Museum and Library Services is requesting proposals leading to one (1) award of a Cooperative Agreement to accomplish the following (1) develop, pilot, deploy, and evaluate a packaged instructor-mediated online course to train library and museum personnel to plan and evaluate outcomes-based projects, (2) compare the effectiveness of that course to an analogous existing workshop, and (3) develop a widely usable cost model for developing and offering such a course. Organizations eligible for the award include public and not-for-profit institutions of higher education, all types of libraries (except federal and for-profit libraries), library consortia, all types of public and not-for-profit

museums, and museum consortia. Federally operated and for-profit museums may not apply for IMLS funds. Professional associations serving the museum or library field are eligible. Research libraries that give the public access to services and materials suitable for scholarly research not otherwise available to the public and that are not part of a university or college are eligible. The Cooperative Agreement will be for up to three years. The award amount will be up to $1,000,000. Those interested in receiving the application guidelines should see the following address information.

DATES: The program guidelines are scheduled for release and posting on the Internet on approximately June 1, 2004. Proposals are due September 15, 2004.

ADDRESSES: The program guidelines will be posted to the Institute's Web site at *http://www.imls.gov/whatsnew/current/outcomescourse.htm* on approximately June 1, 2004. For a copy of the proposal guidelines contact: Susan Malbin, Program Officer, Office of Library Services, Room 802, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone 202–606–5389, e-mail *smalbin@imls.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Malbin, Program Officer, Office of Library Services, Room 802, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone 202–606–5389, e-mail *smalbin@imls.gov*.

Dated: May 27, 2004.

Rebecca Danvers,

Director of Research and Technology.

[FR Doc. 04–12507 Filed 6–2–04; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 19, "Notices, Instructions, and Reports to Workers: Inspection and Investigations."

2. *Current OMB approval number:* 3150–0044.

3. *How often the collection is required:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

4. *Who is required or asked to report:* Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.

5. *The number of annual respondents:* 4,650.

6. *The number of hours needed annually to complete the requirement or request:* 35,674 hours (4,553 reporting (approximately 17.78 hours per response) and (31,121 recordkeeping hours (approximately 6.69 hours per recordkeeper)).

7. *Abstract:* Title 10 of the Code of Federal Regulations, part 19, requires licensees to advise workers on an annual basis of any radiation exposure they may have received as a result of NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of a worker, former worker, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses thereunder regarding radiological working conditions.

The worker should be informed of the radiation dose he or she receives because: (a) That information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of an accident or incident (if this dose is in excess of the 10 CFR Part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation, precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of Commission regulations, and individual radiation exposure reports which are available to him.

Submit, by August 2, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov*.

Dated in Rockville, Maryland, this 27th day of May, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–12519 Filed 6–2–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of

continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 39—Licenses and Radiation Safety Requirements for Well Logging.

2. *Current OMB approval number:* 3150–0130.

3. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. *Who will be required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

5. *The estimated number of annual respondents:* 161 (35 NRC licensees and 126 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 34,933 hours. The NRC licensees total burden is 7,594 hours (111 reporting hrs plus 7,483 recordkeeping hrs). The Agreement State licensees total burden is 27,339 hours (405 reporting hrs plus 26,934 recordkeeping hrs). The average burden per response for both NRC licensees and Agreement State licensees is 3.2 hours, and the burden per recordkeeper is 214 hours.

7. *Abstract:* 10 CFR part 39 establishes radiation safety requirements for the use of radioactive material in well logging operations. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Submit, by August 2, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov*.

Dated in Rockville, Maryland, this 26th day of May, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–12520 Filed 6–2–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Espirito Santo Overseas Limited and Banco Espirito Santo, S.A., To Withdraw Its Non-Cumulative Guaranteed Preference Shares, Series B, $25 par value, From Listing and Registration on the New York Stock Exchange, Inc.; File No. 1–12524

May 27, 2004.

On May 21, 2004, Espirito Santo Overseas Limited, SA., a Cayman Islands corporation ("Issuer"), and Banco Espirito Santo, S.A., a Portugal corporation ("Guarantor"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Non-Cumulative Guaranteed Preference Shares, Series B, $25 par value, ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Directors ("Board") of the Issuer adopted a resolution on April 29, 2004 to withdraw the Issuer's Security from listing on the NYSE. The Board states that the following reasons factored into its decision to withdraw the Security: (i) The limited trading volume of the Security (the Issuer and the Guarantor have determined, based on conversations with the NYSE and information derived from third-party databases, that the average daily trading volume of the Security on the NYSE in the six months immediately preceding April 29, 2004 was less than 2,000 shares); (ii) the limited number of holders of record of the Security (the Issuer and the Guarantor have been informed by The Bank of New York, which acts as registrar, transfer agent and paying agent for the Security, that the worldwide number of holders of record of the Security as of December 31, 2003 was 69); and (iii) the costs associated with continued listing of the Security on the NYSE, including costs associated with compliance with the applicable reporting and other requirements of the Commission.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE, and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before June 21, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–12524 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. All submissions should refer to File Number 1–12524. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All comments

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

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.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–12548 Filed 6–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27849]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 27, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 21, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 21, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

[5] 17 CFR 200.30–3(a)(1).

Georgia Power Company, et. al. (70–10223)

Georgia Power Company ("Georgia Power"), 241 Ralph McGill Boulevard, NE., Atlanta, Georgia 30308, a wholly-owned utility subsidiary of The Southern Company ("Southern"), a registered holding company; Gulf Power Company ("Gulf Power"), One Energy Place, Pensacola, Florida 32520, a wholly-owned utility subsidiary of Southern; Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi 39501, a wholly-owned utility subsidiary of Southern; Savannah Electric and Power Company ("Savannah Power"), 600 Bay Street East, Savannah, Georgia 31401, a wholly-owned utility subsidiary of Southern; and Southern Company Funding Corporation ("Southern Funding"), 270 Peachtree Street, NW., Atlanta, Georgia 30303, a wholly-owned subsidiary of Southern (collectively, "Applicants"), have filed a declaration/application ("Declaration") under sections 6, 7, 9(a), 10, and 12(b) of the Act and rules 45 and 54 under the Act.

By order dated November 8, 2000 (Holding Company Act Release No. 27273), Southern Funding was authorized to issue commercial paper at the request and for the benefit of the Applicants and Alabama Power Company ("Alabama Power"), and Southern Electric Generating Company ("SEGCO") (collectively, "Operating Companies") in an amount not to exceed $3.5 billion outstanding at any time prior to June 30, 2004. The Operating Companies were authorized to borrow the proceeds from the sale of the commercial paper issued for their benefit.

Applicants now seek authority for Southern Funding to issue and sell commercial paper at the request of the Operating Companies from time to time prior to June 30, 2007 ("Authorization Period") in an aggregate principal amount at any one time outstanding not to exceed $8.4 billion. Applicants also seek authority for Georgia Power, Gulf Power, Mississippi Power and Savannah Power to borrow the proceeds of the sale of commercial paper in amounts that will not at any time during the Authorization Period exceed $3.2 billion for Georgia Power, $600 million for Gulf Power, $500 million for Mississippi Power, and $120 million for Savannah Power. The remaining amount of commercial paper authorized to be issued by Southern Funding will be issued at the request of, and borrowed by, Alabama Power and SEGCO.[1] Finally, Applicants seek authority for Georgia Power to guarantee any loan by Southern Funding to SEGCO in an amount of up to $150 million, or to re-lend any borrowing Georgia Power makes from Southern Funding to SEGCO. Alabama Power and Georgia Power each own 50% of the outstanding common stock of SEGCO and are entitled to one-half of SEGCO's capacity and energy.

Currently, Georgia Power, Mississippi Power and Savannah Power have authority to make short-term and term loan borrowings in amounts not to exceed $3.2 billion, $500 million, and $120 million, respectively, prior to March 31, 2006,[2] and Gulf Power has authority to effect short-term and term loan borrowings in an amount not to exceed $600 million prior to January 1, 2007 [3] (collectively, "Short-Term Borrowing Orders"). Applicants propose to aggregate the authority requested in the Declaration with the existing authority in the Short-Term Borrowing Orders so that at all times when the order in connection with this Declaration is in effect, Georgia Power, Mississippi Power, Savannah Power and Gulf Power will have short-term borrowing authorizations in an amount not to exceed $3.2 billion, $600 million, $500 million and $120 million aggregate principal amount, respectively.

Southern Funding has entered into financial services agreements with each Operating Company under which Southern Funding has agreed to use its reasonable best efforts to issue commercial paper in amounts and at times as requested by each Operating Company. Each of Georgia Power, Gulf Power, Mississippi Power and Savannah Power proposes to borrow the cash proceeds of each issuance it requests. Each Operating Company's requested borrowing will be evidenced on a grid promissory note from the Operating Company to Southern Funding, on which each borrowing will be reflected until repaid. The terms of each borrowing will be identical to those of the related commercial paper issued for its benefit. In addition, Georgia Power also requests authority to guarantee any loan by Southern Funding to SEGCO, or to re-lend any borrowing Georgia Power

[1] Applicants state that the security issuances by Alabama Power and SEGCO are exempt from prior Commission review in accordance with rule 52(a) of the Act.

[2] *See* Holding Company Act Release No. 27617 (December 16, 2002) (Georgia Power); Holding Company Act Release No. 27616 (December 16, 2002) (Mississippi Power); and Holding Company Act Release No. 27618 (December 16, 2002) (Savannah Power).

[3] *See* Holding Company Act Release No. 27773 (December 18, 2003) (Gulf Power).

makes from Southern Funding to SEGCO. The amount of any guarantee by Georgia Power will not exceed $150 million at any one time outstanding, and may be made by Georgia Power individually to SEGCO, or jointly and severally by Georgia Power and Alabama Power to SEGCO.

The commercial paper that may be issued by Southern Funding will be in the form of promissory notes with varying maturities not to exceed one year, which maturities may be subject to extension to a final maturity not to exceed 390 days. Actual maturities will be determined by market conditions, the effective interest costs and the anticipated cash flows of the respective Operating Companies, including the proceeds of other borrowings, at the time of issuance. The commercial paper notes will be issued in denominations of not less than $50,000 and will not by their terms be payable prior to maturity.

The commercial paper will be sold by Southern Funding directly to or through a dealer or dealers (the "dealer"). The discount rate (or the interest rate in the case of interest-bearing notes), including any commissions, will not be in excess of the discount rate per annum (or the equivalent interest rate) prevailing at the date of issuance for commercial paper of comparable quality with the same maturity sold by other issuers to commercial paper dealers.

No commission or fee will be payable in connection with the issuance and sale of commercial paper, except for a commission not to exceed ⅛th of 1% per annum payable to the dealer in respect of commercial paper sold through the dealer as principal. The dealer will re-offer such commercial paper at a discount rate of up to ⅛th of 1% per annum less than the prevailing interest rate to Southern Funding or at an equivalent cost if sold on an interest-bearing basis.

Each Applicant (other than Southern Funding) represents that through the Authorization Period it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty percent. Southern Funding will not issue any securities on behalf of an Applicant (other than commercial paper with a maturity of one year or less) under this Declaration unless upon original issuance: (i) The securities, if rated, are rated at least investment grade, (ii) all outstanding securities of the Applicant on whose behalf the borrowing will be made that are rated are rated investment grade, and (iii) all outstanding securities of Southern that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended. Gulf Power requests that Southern Funding be permitted to issue a security on Gulf Power's behalf that does not satisfy the foregoing condition if the requirements of rule 52(a)(1) and rule 52(a)(3) are met and the issue and sale of the security have been expressly authorized by the Florida Public Service Commission. Applicants request that the Commission reserve jurisdiction over the issuance of any securities at any time that the conditions set forth above are not satisfied.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12549 Filed 6–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49775; File No. SR–Amex–2004–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Article II, Section 3 of the Exchange Constitution

May 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of Proposed Rule Change

The Exchange proposes to amend Article II, section 3 of the Exchange Constitution. The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

Article II Government and Administration

* * * * *

Section 3 Powers, Duties and Procedures

"Powers and Duties"—"Group Hospitalization Plan." No change.

Regulatory Services Agreements

The Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would create a mechanism that would allow the Exchange to contract with another self-regulatory organization for the performance of certain of Amex's regulatory functions. The purpose of the proposed rule change is to enhance the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amex's ability to carry out its regulatory obligations under the Act by providing the Amex the ability to contract with another self-regulatory organization for regulatory services. Under any agreement for regulatory services with another self-regulatory organization, the Amex would remain a self-regulatory organization registered under section 6 of the Act [3] and, therefore, will continue to have statutory authority and responsibility for enforcing compliance by its members, and persons associated with its members, with the Act, the rules thereunder, and the rules of the Exchange.

This rule change would have immediate applicability with respect to a Regulatory Services Agreement ("RSA") dated as of April 30, 2004, between the National Association of Securities Dealers, Inc. ("NASD") and the Amex. The Amex has determined that, to best discharge its self-regulatory responsibilities, it will contract with the NASD, which is subject to Commission oversight pursuant sections 15A and 19 of the Act,[4] for the NASD to provide certain regulatory services to the Amex, as set forth in the RSA. In performing services under the RSA, the NASD will be operating pursuant to the statutory self-regulatory responsibilities of the Amex under section 6 and section 19 of the Act [5] (and applying the Amex's rules), and the proposed rule change specifically states that any action taken by another self-regulatory organization, or its employees or authorized agents, operating pursuant to a regulatory services agreement with the Exchange (*e.g.*, NASD) will be deemed an action taken by the Exchange (without, however, affecting the Commission's oversight of such other self-regulatory organization). The Amex will, nonetheless, retain ultimate responsibility for performance of its self-regulatory duties under the RSA, and the proposed rule change states that the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act [6] in general, and furthers the objectives of section 6(b)(1),[7] 6(b)(6),[8] and 6(b)(7) [9] in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Article XIII, section 1 of the Exchange Constitution provides, in part, that amendments to the Amex Constitution may be adopted only if approved by the NASD. Amex hereby consents to extension of the period of time specified in section 19(b)(2) of the Act [10] until at least thirty-five days after the Exchange files an appropriate amendment to this filing setting forth the completion of all additional action required under the Exchange Constitution with respect to this proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–32 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–32 and should be submitted on or before June 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12551 Filed 6–2–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78*o*–3 and 15 U.S.C. 78s.

[5] 15 U.S.C. 78f and 15 U.S.C. 78s.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49776; File No. SR–NYSE–2004–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Trading Hours for Three Exchange-Traded Funds Listed on the Exchange

May 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 20, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to specify that 4:15 p.m. (New York time) is the closing time applicable to trading on the NYSE in the following exchange-traded funds ("ETFs") listed on the Exchange: Fresco Dow Jones STOXX 50SM Fund, Fresco Dow Jones EURO STOXX 50SM Fund, and iSharesa® S&P Global 100 Fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to specify that 4:15 p.m. (New York time) is the closing time applicable to trading on the NYSE in the following ETFs listed on the Exchange: Fresco Dow Jones STOXX 50SM Fund (symbol: FEU), Fresco Dow Jones EURO STOXX 50SM Fund (symbol: FEZ), and iShares® S&P Global 100 Fund (symbol: IOO).[3] The Commission previously has approved the listing and trading of these ETFs on the Exchange.[4]

The current trading hours for FEU and FEZ are 9:30 a.m. to 4:15 p.m. These securities currently trade until 4:15 p.m. pursuant to NYSE Rule 1100(e), which states that any series of Investment Company Units (which term encompasses ETFs) so designated by the Exchange may be traded until 4:15 p.m. In SR–NYSE–2002–51, the Exchange stated incorrectly that the close of trading in these ETFs would be 4 p.m. The Exchange is correcting the misstatement in SR–NYSE–2002–51 and hereby specifies these securities may be traded until 4:15 p.m.

In SR–NYSE–00–53, the Exchange stated that IOO would be traded until 4 p.m. and that at such time as futures contracts are traded on the S&P Global 100 Index trading would be permitted until 4:15 p.m. The Exchange has now determined that IOO should trade until 4:15 p.m. pursuant to NYSE Rule 1100(e), notwithstanding that futures on the underlying index are not currently traded. The Exchange believes that trading IOO until 4:15 p.m. will provide investors with greater investment flexibility and will be generally consistent with trading hours applicable to most ETF trading on the NYSE and in other U.S. securities markets.

2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is the requirement under section 6(b)(5) of the Act[5] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder[7] because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[8]

The NYSE has requested that the Commission waive the 30-day period, which would make the rule change operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case. Allowing the rule change to become operative immediately should provide investors with greater investment flexibility and standardize the trading hours applicable to most ETFs trading on the NYSE and on other exchanges.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "Fresco Index Shares," "Dow Jones," and "STOXX" are the respective trademarks or service marks of Fresco Index Shares Funds, Dow Jones & Company, Inc., and STOXX Limited. "iShares" is a registered trademark of Barclays Global Investors, Inc.

[4] *See* Securities Exchange Act Release Nos. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002 (SR–NYSE–2002–51) (approving listing and trading of FEU and FEZ on the NYSE); and 43658 (December 2, 2000), 65 FR 77408 (December 11, 2000) (SR–NYSE–00–53) (approving listing and trading of IOO on the NYSE).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] As required under Rule 19b–4(f)(6)(iii), the NYSE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[9] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–26 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–26 and should be submitted on or before June 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12552 Filed 6–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49773; File No. SR–PCX–2004–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Modifying the Market Imbalance Calculation

May 26, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On May 24, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to modify and clarify current ArcaEx practices with respect to the calculation of the Market Imbalance provided for in PCXE Rule 1.1.

The text of the proposed rule change is below. Proposed additions are in *italics*.

* * * * *

PCX Equities, Inc.

Rule 1

Definitions

Rule 1.1(a)–(p)—No Change.

Imbalance

(q) For the purposes of the Opening Auction, the Market Order Auction, the Closing Auction and the Trading Halt Auction, as the case may be,

(1) The term "Imbalance" shall mean the number of buy or sell shares that cannot be matched with other shares at the Indicative Match Price at any given time.

(A) The term "Total Imbalance" shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.

(B) The term "Market Imbalance" shall mean:

(i) as it relates to the Market Order Auction, the imbalance of any remaining buy (sell) Market Orders that are not matched for execution *against Market Orders* during the applicable auction.

(ii) As it relates to the Closing Auction, the imbalance of any remaining buy (sell) Market-on-Close Orders that are not matched for execution *against Market-on-Close Orders* during the applicable auction.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify PCXE Rule 1.1 for the purpose of modifying the ArcaEx calculation of the Market Imbalance. Currently, the Market Imbalance, as it relates to the Market Order Auction, is defined as the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the Market Order

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Mai Shiver, Acting Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Commission, dated May 21, 2004 ("Amendment No. 1"). In Amendment No. 1, the PCX replaced and superceded the original filing in its entirety.

Auction.[4] As such, all eligible Market and Limit Orders that are eligible for execution in the auction against Market Orders are taken into consideration when calculating the Market Imbalance for the Market Order Auction. Similarly, the Market Imbalance for the Closing Auction is defined as the imbalance of any remaining buy (sell) Market-on-Close ("MOC") Orders that are not matched for execution during the Closing Auction.[5] As such, all eligible MOC, Limit and Limit-on-Close ("LOC") Orders that are eligible for execution in the Closing Auction against MOC Orders are taken into consideration when calculating the Market Imbalance for the Closing Auction.

The Exchange proposes to modify the Market Imbalance calculation for both the Market Order Auction and the Closing Auction such that it will only take into consideration Market Orders (for the Market Order Auction) and MOC Orders (for the Closing Auction) in determining the Market Imbalance. For example, the Market Imbalance will be calculated as the imbalance of any buy (sell) Market Orders (for the Market Order Auction) and buy (sell) MOC Orders (for the Closing Auction) that remain after executing against sell (buy) Market Orders (for the Market Order Auction) and executing against sell (buy) MOC Orders (for the Closing Auction). Accordingly, the new Market Imbalance calculation will not take Limit and LOC Orders eligible for execution in the applicable auction into consideration.

The Exchange believes that by modifying the Market Imbalance calculation, it provides better information about the nature of the imbalances in the applicable auction. In particular, currently the Market Imbalance results in zero if there are a sufficient number of Limit Orders or LOC Orders in the auction that are executable against Market Orders or MOC Orders. By limiting the Market Imbalance calculation to exclusively Market Orders and MOC Orders matched for execution, the Exchange would provide Users[6] with more information about the number of Market Orders and MOC Orders available for execution on the side of the market with an excess number of such orders during the applicable auction.

The following example illustrates the impact of the proposed modification on the calculation of the Market Imbalance as it relates to the Closing Auction:

Current Market Imbalance Calculation

Buy 100,000 MOC
Sell 50,000 LOC @22.00
Sell Limit Orders in the book = 90,000 @23.00
Matched Volume = 100,000
Indicative Match Price = 23.00
Total Imbalance = −40,000
Market Imbalance = 0

Proposed Market Imbalance Calculation

Buy 100,000 MOC
Sell 50,000 LOC @22.00
Sell Limit Orders in the book = 90,000 @23.00
Matched Volume = 100,000
Indicative Match Price = 23.00
Total Imbalance = −40,000
Market Imbalance = +100,00
If a User were to enter a Sell 25,000 MOC Order, then
Market Imbalance = +75,000. .

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. All submissions should refer to File Number SR–PCX–2004–46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–PCX–2004–46 and should be submitted on or before June 24, 2004.

[4] PCXE Rule 1.1(q).

[5] *Id.*

[6] *See* PCXE Rule 1.1(yy) for the definition of "User."

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12550 Filed 6–2–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3576]

State of Missouri

Cass County and the contiguous counties of Bates, Henry, Jackson, and Johnson in the State of Missouri, and Johnson and Miami counties in the State of Kansas constitute a disaster area due to damages caused by heavy rain and subsequent flash flooding that occurred on May 18 and 19, 2004. Applications for loans for physical damage may be filed until the close of business on July 26, 2004, and for economic injury until the close of business on February 26, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Fort Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with credit available elsewhere	5.500
Businesses and non-profit organizations without credit available elsewhere	2.750
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.750

The number assigned to this disaster for physical damage is 357606 for Missouri and 358106 for Kansas; and for economic damage is 9ZE600 for Missouri and 9ZE700 for Kansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 26, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–12516 Filed 6–2–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: (202) 395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: (410) 965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at (410) 965–0454 or by writing to the address listed above.

1. Statement of Agricultural Employer (Years prior to 1988); Statement of Agricultural Employer (1988 and Later)—0960–0036. The information on Forms SSA–1002 and SSA–1003 is used by the Social Security Administration (SSA) to resolve discrepancies when farm workers have alleged that their employers did not report their wages or reported them incorrectly. The respondents are agricultural employers.

Type of Request: Extension of an OMB-approved information collection.

	No. of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden
SSA–1002	75,000	1	10	12,500
SSA–1003	50,000	1	30	25,000
Total	25,000			37,500

2. Representative Payee Evaluation Report—20 CFR 404.2065 and 416.665—0960–0069. The information on form SSA–624 is used by SSA to accurately account for the use of Social Security benefits and Supplemental Security Income payments received by representative payees on behalf of an individual. The respondents are individuals and organizations who received form SSA–623 or SSA–6230 and failed to respond, provided unacceptable responses that could not be resolved or reported a change in custody.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 252,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Average Burden: 126,000 hours.

[9] 17 CFR 200.30–3(a)(12).

3. Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution—20 CFR416.200 and 416.203—0960–0293. Form SSA–4641–U2 provides financial institutions with the customer's authorization to disclose records. Responses to the questions are used, in part, to determine whether resource requirements are met in the Supplemental Security Income program. The respondents are financial institutions (banks, savings and loans, credit unions, etc.).

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden per Response: 6 minutes.

Estimated Annual Burden: 50,000 hours.

4. Agency/Employer Government Pension Offset Questionnaire—20 CFR 404–408a—0960–0470. The information collected by form SSA–L4163 provides SSA with accurate information from the agency paying a claimant's pension. This form is only used when (1) the claimant does not have the necessary information and (2) the pension-paying agency has not cooperated with the claimant in providing this information. Respondents are Federal, State, or local government agencies that have information needed by SSA to determine whether the Government Pension Offset provisions apply and if so, what is the amount of the offset.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 50 hours.

5. Request for Correction of Earnings Record—20 CFR 404.820 and 422.125—0960–0029. Form SSA–7008 is used by individual wage earners to request SSA review, and, if necessary, correction of the Agency's master record of their earnings. The respondents are individuals who question SSA's record of their earnings.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 37,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 6,250 hours.

6. Beneficiary Recontact Report—20 CFR 404.703 and 404.705—0960–0536. SSA collects the information on Form SSA–1587 to ensure that eligibility for benefits continues after entitlement is established. SSA asks representative payees of children ages 15–17 information about marital status to detect possible overpayments and avoid continuing payment to those no longer entitled. Studies show that the representative payees of children who marry often fail to report the marriage, which is a terminating event. The respondents are payees who receive Title II (Old-Age, Survivors and Disability Insurance) benefits on behalf of children ages 15–17.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 982,357.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Annual Burden: 49,118.

7. Waiver of Your Right to Personal Appearance Before an Administrative Law Judge—0960–0284—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i). Each claimant has a statutory right to appear in person (or through a representative) and present evidence about his/her claim at a hearing before an Administrative Law Judge (ALJ). If a claimant wishes to waive his/her statutory right to appear before an ALJ, he/she must complete a written request. The claimant may use Form HA–4608 for this request. The information collected is used to document an individual's claim to show that an oral hearing is not preferred in the appellate process. The respondents are applicants for Social Security and Supplemental Security Income benefits who request a hearing.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 400 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at (410) 965–0454, or by writing to the address listed above.

1. Request for Waiver of Overpayment Recovery or Change in Repayment Notice—20 CFR 404.502–404.515 and 20 CFR 416.550–416.570—0960–0037. Form SSA–632 collects information on the circumstances surrounding overpayment of Social Security Benefits to recipients. SSA uses the information to determine whether recovery of an overpayment amount can be waived or must be repaid and, if repaid, how recovery will be made. The respondents are recipients of Social Security, Medicare or Supplemental Security Income overpayments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 1,000,000 hours.

2. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—20 CFR 404.330 and 404.339—0960–0019. SSA uses the information collected on form SSA–781 to decide if "in care" requirements are met by the non-custodial parent who is filing for benefits based on having a child in care. The respondents are non-custodial wage earners whose entitlement to benefits depends upon having an entitled child in care.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2,333 hours.

3. Application for Benefits Under the Italy-U.S. International Social Security Agreement—20 CFR 404.1925—0960–0445. The information collected on Form SSA–2528 is required by SSA in order to determine entitlement to benefits. The respondents are applicants for old-age, survivors or disability benefits, who reside in Italy.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 67 hours.

4. Real Property Current Market Value Estimate—0960–0471. The SSA-L2794 is used to obtain current market value estimates of real property owned by applicants for, or beneficiaries of, Supplemental Security Income payments (or a person whose resources are deemed to such an individual). The value of an individual's resources, including non-home real property is one of the eligibility requirements for SSI payments. The respondents are individuals with knowledge of local real property values.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,438.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 1,813 hours.

Dated: May 27, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–12505 Filed 6–2–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4727]

30-Day Notice of Proposed Information Collection: Form DS–156E, Nonimmigrant Treaty Trader/Investor Application; OMB Control Number 1405–0101

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Nonimmigrant Treaty Trader/Investor Application.

Frequency: Once per respondent.

Form Number: DS–156E.

Respondents: Nonimmigrant treaty trader/investor visa applicants.

Estimated Number of Respondents: 17,000 per year.

Average Hours Per Response: 4 hours.

Total Estimated Burden: 68,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached on 202–663–1166. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–7860.

Dated: May 26, 2004.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04–12611 Filed 6–2–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4728]

30-Day Notice of Proposed Information Collection: Form DS–230, Application for Immigrant Visa and Alien Registration; OMB Control Number 1405–0015

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Application for Immigrant Visa and Alien Registration.

Frequency: Once per respondent.

Form Number: DS–230.

Respondents: Immigrant visa applicants.

Estimated Number of Respondents: 475,000 per year.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 950,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached on 202–663–1166. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–7860.

Dated: May 13, 2004.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04–12612 Filed 6–2–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4729]

30-Day Notice of Proposed Information Collection: DS–2031, Shrimp Exporter's/Importer's Declaration; OMB Control Number 1405–0095

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Shrimp Exporter's/Importer's Declaration.
- *OMB Control Number:* 1405–0095.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation (OES/OMC).
- *Form Number:* DS–2031.
- *Respondents:* Foreign shrimp exporters, foreign governments (in some cases) and U.S. importers.

• *Estimated Number of Respondents:* 3,000 per year.
• *Estimated Number of Responses:* 9,000 per year, estimated.
• *Average Hours Per Response:* 10 minutes.
• *Total Estimated Burden:* 1,666.
• *Frequency:* On occasion
• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: Comments may be submitted to the Office of Management and Budget (OMB) for up to 30 days from June 3, 2004.

ADDRESSES: Comments and questions should be directed to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on 202–395–7860. You may submit comments by any of the following methods:
• E-mail: *ahunt@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
• Hand Delivery or Courier: OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
• Fax: 202–395–6974.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The form DS–2031 is necessary to track the method of production of shrimp and shrimp products in order to implement trade controls called for in Section 609 of Pub. L. 101–162 relating to sea turtle protection in shrimp fisheries.

Methodology: The information called for by the DS–2031 will be collected from the respondents directly on the form, and the form will accompany the controlled products (shrimp and shrimp products using harmonized tariff codes 0306.13.00, 0306.23.00, 1605.20.05, or 1605.20.10) through the international trade process through to importation into the United States. The information should be available for inspection by U.S. Customs and Border Protection upon entry or for a period of three years after importation. The importer of the controlled products should maintain the information for a period of three years.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from James Story, Office of Marine Conservation, U.S. Department of State, 2201 C St. NW., Washington, DC 20520, who may be reached on 202–647–2335.

Dated: May 26, 2004.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 04–12613 Filed 6–2–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4730]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Hassan Abdullah Hersi al-Turki, also known as Hassan al-Turki

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002 and Executive Order 13284 of January 23, 2003, and in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that Hassan Abdullah Hersi al-Turki, also known as Hassan al-Turki, has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: May 25, 2004.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 04–12614 Filed 6–2–04; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 21, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–17907.
Date Filed: May 17, 2004.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 373—Resolution 010u, TC23/TC123 Africa-TC3 Special Passenger Amending Resolution from Singapore to Africa r1–r7, Intended effective date: June 1, 2004.

Docket Number: OST–2004–17936.
Date Filed: May 21, 2004.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 374—Resolution 010v, PTC2 EUR–AFR 0201, TC2 Special Passenger Amending Resolution Libya-Italy r1–r3, Intended effective date: June 1, 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–12535 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 21, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions To Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the

adoption of a show-cause order, a tentative order, or in appropriate cases, a final order without further proceedings.

Docket Number: OST–2001–9737.

Date Filed: May 17, 2004.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: June 7, 2004.

Description: Application of Vensecar Internacional, C.A. requesting an amendment to its application for a foreign air carrier permit authorizing it to: (1) Add the Netherlands Antilles and Jamaica as authorized intermediate points on its all-cargo flights between Venezuela and Miami; (2) engage in scheduled foreign air transportation of property and mail between a point or points in Venezuela and Houston, Texas, via the Netherlands Antilles and Jamaica; and (3) engage in scheduled foreign air transportation of property and mail from a point or points in Venezuela to San Juan, Puerto Rico, and beyond to Spain, France, the Netherlands and Germany, and beyond to points outside Europe.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–12536 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change In Use of Aeronautical Property at Lawrence Municipal Airport, Lawrence, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the City of Lawrence, Massachusetts request to change a portion (approx. 1.38 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located on Clark Street and is adjacent to 21 Clark Street. The property is and will continue to be utilized for vehicle parking associated with a business located at 21 Clark Street. The property was acquired under FAAP Project Nos. 9–19–0007–0804 and 9–19–007–6106.

This notice is as a result of a corrective action item in response to a land use inspection that found the unauthorized use of airport property.

All revenues derived from the lease of the property will be used for airport purposes in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before July 6, 2004.

ADDRESSES: Documents are available for review by appointment only by contacting Mr. Michael P. Miller, at Lawrence Municipal Airport, 492 Sutton Street, North Andover, Massachusetts 01845, telephone (978) 794–5880 and the Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts. Written comments on the Sponsor's request must be delivered or mailed to Ms. Donna R. Witte, Airports Program Specialist, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803, tel. (781) 238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (781) 238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts, on May 18, 2004.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 04–12542 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Request To Impose and Use a Passenger Facility Charge (PFC) at Hartsfield Jackson Atlanta International Airport, Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on a request to impose and use PFC at the Hartsfield Jackson Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 6, 2004.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Arthur L. Bacon, Director Of Finance of the City of Atlanta, Department of Aviation at the following address: City of Atlanta, Department of Aviation, P.O. Box 20509, Atlanta, Georgia 30320–2509.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Atlanta, Department of Aviation under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Terry R. Washington, P.E, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, College Park, Georgia 30337–2747, telephone number (404) 305–7143. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use PFC at Hartsfield-Jackson Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 17, 2004, the FAA determined that the application to Impose and Use PFC submitted by The City of Atlanta was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 16, 2004. The following is a brief overview of the application request.

PFC Application No.: 04–06–C–00–ATL.

Level of the proposed PFC: $4.50.

Proposed charge effective date: May 1, 1997.

Proposed charge expiration date: May 1, 2019.

Total estimated net PFC revenue increase: $18,462,000.

Brief description of projects:

1. Security Screening Checkpoint ("SSCP") Reconfiguration and Expansion Project.

2. Security Access Control System Project.

Class or classes of air carriers which the public agency has requested not be

required to collect PFCs: Air Taxi/Commercial Operators (ATCO) when enplaning revenue passengers in limited, irregular, special service operations

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Atlanta's Department of Aviation.

Issued in College Park, Georgia, on May 26, 2004.

Daniel Gaetan,

Acting Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 04–12541 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2004–17195]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 29 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: June 3, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, (202) 366–2990, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On April 1, 2004, the FMCSA published a notice of receipt of exemption applications from 29 individuals, and requested comments from the public (69 FR 17263). The 29 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Manuel A. Almeida, James C. Askin, Paul J. Bannon, Ernie E. Black, Gary O. Brady, Michael C. Branham, Stephen H. Goldcamp, Steven F. Grass, Donald E. Hathaway, Michael S. Johannsen, Mearl C. Kennedy, Wai Fung King, Christopher J. Meerten, William J. Miller, Robert J. Mohorter, James A. Mohr, Charles R. Murphy, Lacy L. Patterson, Roderick F. Peterson, Stephen P. Preslopsky, Timothy J. Sands, Donald W. Sidwell, David M. Smith, Jose M. Suarez, Robert L. Swartz, Jr., Elmer K. Thomas, Robert L. Vaughn, Richard G. Wendt, and Richard A. Yeager.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 29 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on May 3, 2004. One comment was received.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (*See* Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 29 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, corneal and retinal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but nine of the applicants were either born with their vision impairments or have had them since childhood. The nine individuals who sustained their vision conditions as adults have had them for periods ranging from 3 to 30 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 29 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 42 years. In the past 3 years, seven of the drivers have had convictions for traffic violations. Six of these convictions were for speeding and one was for "failure to obey traffic sign." None of the drivers was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 1, 2004, notice (69 FR 17263). Since there were no substantial docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here, but note that information

presented at 69 FR 17265 indicating that applicant 10, Michael S. Johannsen, reported he has accumulated 207,000 miles while driving straight trucks for 9 years, is in error. The information should have indicated that Mr. Johannsen reported he has driven straight trucks for 9 years, accumulating 92,000 miles, and tractor-trailer combinations for 14 years, accumulating 207,000 miles. Our summary analysis of the applicants is supported by this correction and the information published on April 1, 2004 (69 FR 17263).

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (*See* Weber, Donald C., Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 29 applicants receiving an exemption, we note that the applicants have had no crashes and only seven traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance. the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 29 applicants listed in the notice of April 1, 2004 (69 FR 17263).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 29 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Ms. Barb Sashaw believes doctors may make statements that favor their patients. The opinions of the vision

specialists on whether a driver has sufficient vision to perform the tasks associated with operating a CMV are made only after a thorough vision examination including formal field of vision testing to identify any medical condition which may compromise the visual field such as glaucoma, stroke or brain tumor. While it is possible a practitioner may be partial, FMCSA believes requiring a signed statement on letterhead would deter doctors from making irresponsible statements. The medical information is combined with information on experience and driving records in the agency's overall determination whether exempting applicants from the vision standard is likely to achieve a level of safety equal to that existing without the exemption.

Also, Ms. Sashaw believes a driver who has only one eye would be without vision if a speck flew into his or her eye. It is not likely a driver would lose all vision from a speck in the eye, although the driver may decide to pull off the road to a safe location because of the discomfort.

Conclusion

Based upon its evaluation of the 29 exemption applications, the FMCSA exempts Manuel A. Almeida, James C. Askin, Paul J. Bannon, Ernie E. Black, Gary O. Brady, Michael C. Branham, Stephen H. Goldcamp, Steven F. Grass, Donald E. Hathaway, Michael S. Johannsen, Mearl C. Kennedy, Wai Fung King, Christopher J. Meerten, William J. Miller, Robert J. Mohorter, James A. Mohr, Charles R. Murphy, Lacy L. Patterson, Roderick F. Peterson, Stephen P. Preslopsky, Timothy J. Sands, Donald W. Sidwell, David M. Smith, Jose M. Suarez, Robert L. Swartz, Jr., Elmer K. Thomas, Robert L. Vaughn, Richard G. Wendt, and Richard A. Yeager from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: May 26, 2004.

Robert F. Proferes,

Director, Office of Bus and Truck Standards and Operations.

[FR Doc. 04–12499 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2004 Apportionments, Allocations and Program Information; Notice of Supplemental Information and Changes

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces further availability of apportionments for the Federal Transit Program. With only temporary extensions of our program authorization, FTA has published two previous documents identifying total annual apportionments and apportionments based on an extension of our program authorization. This notice makes fiscal year (FY) 2004 transit funds available for obligation based on program funding levels authorized by the Surface Transportation Extension Act of 2004, Part II (Pub. L. 108–224). With this notice, generally 9/12 of our annual appropriation is now available for grants. This notice also identifies changes to prior year bus and bus-related allocations, and extends the period of availability for FY 2004 funding for the Elderly and Persons with Disabilities Program (49 U.S.C. 5310).

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator (see list at end of notice) or Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366–2053.

ADDRESSES: Address, telephone, and facsimile information for the FTA Regional Offices is listed at the end of this notice in Appendix A.

I. Funds Available for Obligation

The "Surface Transportation Extension Act of 2004, Part II" (Pub. L. 108–224) was signed into law by President Bush on April 30, 2004. The Act provides an extension of programs funded from the Highway Trust Fund, pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century (TEA–21), and provides contract authority for transit programs from October 1, 2003, through June 30, 2004.

FTA has revised the apportionment and allocation tables published in the supplemental **Federal Register** notice on March 29, 2004, to reflect the amount of FY 2004 funding that is currently available for obligation by grantees for the respective FTA program, in accordance with the Surface Transportation Extension Act of 2004, Part II, and the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, Division F). The revised tables are posted on the FTA Web site at [*http://www.fta.dot.gov/25_ENG_HTML.htm*], together with this notice. The tables are also available by calling the Regional Office. Each Regional Office will also distribute the tables by e-mail to its mailing list.

FTA's program is funded by two sources of funds: the General Fund and the Highway Trust Fund. A column labeled "Apportionment" or "Allocation" in the revised tables includes both trust funds (contract authority) and general funds, and reflects the total dollar amount of obligation limitation and appropriations in the Consolidated Appropriations Act, 2004, once full year contract authority is made available. This amount does not represent the amount that is actually available for obligation at this time. The amount shown in a column labeled "Available Apportionment" or "Available Allocation" is currently available for obligation. The percentage of the full year's apportionment or allocation available to an individual State or urbanized area may vary by program. The total available for some programs included reallocated prior year funds, as shown in table 1. In the case of formula programs, the amounts available were determined by applying the formula to the total amount available for the program. In the case of Congressional allocations, the total amount available for the program was prorated to each project or activity.

II. Changes to Bus and Bus-Related Project Allocations

FTA has made changes to several bus and bus-related projects allocated in previous years based on correspondence received from Congress that clarifies the intent of the projects. The projects and clarifications are as follows:

1. *Fort Smith Bus Maintenance Facility, Arkansas.* The FY 2003 Department of Transportation and Related Agencies Act includes $750,000 in the bus and bus facilities account for "Arkansas—Fort Smith Bus". The Conferees agree that the project description should read "Arkansas—Fort Smith Bus Maintenance Facility".

2. *Pelham Intermodal Facility, New York.* The FY 2002 Department of Transportation and Related Agencies Act includes $260,000 in the bus and bus facilities account for the "New York—Pelham trolley". It is the intent of the conferees that the funds shall be available for Pelham Intermodal Facility.

III. Period of Availability for FY 2004 Section 5310 Funds Extended

The period of availability for funds appropriated for the Elderly and Persons with Disabilities Program (49 U.S.C. 5310) is administratively established at one fiscal year. As noted in the February 11, 2004, **Federal Register** Notice of FTA FY 2004 apportionments and allocations, FY 2004 funds allocated to States under section 5310 must be obligated by September 30, 2004.

Due to the delayed availability of the full year's apportionment of FY 2004 section 5310 funds and the limited period during which the funds may be obligated, FTA is extending the period of availability for FY 2004 section 5310 funds by six months. This should provide flexibility to States that may need additional time to obligate FY 2004 funds. With this six-month extension, FY 2004 funds apportioned to States under section 5310 must be obligated by March 31, 2005.

Issued on: May 27, 2004.

Jennifer L. Dorn,

Administrator.

BILLING CODE 4910–57–P

FEDERAL TRANSIT ADMINISTRATION

TABLE 1

(Appropriation amounts include a .59 percent reduction directed by Section 168 of Division H of the Consolidated Appropriations Act, 2004, Pub. L. 108-199.)

REVISED FY 2004 APPROPRIATIONS, APPORTIONMENTS, AND AVAILABLE FUNDING FOR GRANT PROGRAMS

(Note: Available funding is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Part II: Public Law 108-224.)

SOURCE OF FUNDS	APPROPRIATION & APPORTIONMENT	AVAILABLE FUNDING
TRANSIT PLANNING AND RESEARCH PROGRAMS		
Section 5303 Metropolitan Planning Program	$60,029,325	$45,021,994
Reapportioned Funds Added	1,426,868	1,426,868
Total Apportioned	$61,456,193	$46,448,862
Section 5313(b) State Planning and Research Program	$12,539,975	$9,404,981
Reapportioned Funds Added	719,074	719,074
Total Apportioned	$13,259,049	$10,124,055
Section 5311(b)(2) Rural Transit Assistance Program (RTAP)	$5,219,025	$3,914,269
Reapportioned Funds Added	79	79
Total Apportioned	$5,219,104	$3,914,348
Section 5314 National Planning and Research Program	$35,290,550	$26,467,913
FORMULA PROGRAMS	$3,766,644,900 a/	$2,824,983,674 a/
Alaska Railroad (Section 5307)	4,821,335	3,616,001
Less Oversight (one-half percent)	(24,107)	(18,080)
Total Available	4,797,228	3,597,921
Section 5308 Clean Fuels Formula Program	0 a/	0 a/
Over-the-Road Bus Accessibility Program	6,908,995	5,181,746
Section 5307 Urbanized Area Formula Program		
91.23% of Total Available for Sections 5307, 5311, and 5310	$3,425,608,562	$2,569,206,421
Less Oversight (one-half percent)	(17,128,043)	(12,846,032)
Reapportioned Funds Added	3,039,008	3,039,008
Total Apportioned	$3,411,519,527	$2,559,399,397
Section 5311 Nonurbanized Area Formula Program		
6.37% of Total Available for Sections 5307, 5311, and 5310	$239,188,058	$179,391,044
Less Oversight (one-half percent)	(1,195,940)	(896,955)
Reapportioned Funds Added	508,944	508,944
Total Apportioned	$238,501,062	$179,003,033
Section 5310 Elderly and Persons with Disabilities Formula Program		
2.4% of Total Available for Sections 5307, 5311, and 5310	$90,117,950	$67,588,462
Reapportioned Funds Added	243,077	243,077
Total Apportioned	$90,361,027	$67,831,539
CAPITAL INVESTMENT PROGRAM	$3,193,090,232	$2,395,946,295
Section 5309 Fixed Guideway Modernization	$1,199,387,615	$899,540,711
Less Oversight (one percent)	(11,993,876)	(8,995,407)
Total Apportioned	$1,187,393,739	$890,545,304
Section 5309 New Starts	$1,320,498,097 b/	$991,502,194 b/
Less Oversight (one percent)	(13,204,981)	(9,915,022)
Reallocated Funds Added	5	5
Total Allocated	$1,307,293,121	$981,587,177
Section 5309 Bus and Bus-Related	$673,204,520 c/	$504,903,390 c/
Less Oversight (one percent)	(6,732,045)	(5,049,034)
Reallocated Funds Added	2,188,112 d/	2,188,112 d/
Total Allocated	$668,660,587	$502,042,468
JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21)	$104,380,500	$78,285,375
TOTAL APPROPRIATION (Above Grant Programs)	**$7,177,194,507**	**$5,384,024,501**
TOTAL APPORTIONMENT/ALLOCATION (Above Grant Programs)	**$7,135,040,682**	**$5,354,429,138**

a/ The Consolidated Appropriations Act, 2004 transfers funds appropriated for the Clean Fuels Formula Program to the Section 5309 Bus and Bus-Related category

b/ Includes $4,514,482 in FY 2000 and FY 2001 funds transferred from the Job Access and Reverse Commute Program

c/ Includes funds transferred from the Clean Fuels Program and the Job Access and Reverse Commute Program in the Consolidated Appropriations Act, 2004 (Pub. L. 108-199).

d/ FY 2004 Conference Report supplements Bus funds with reallocated funds made available from projects included in previous Appropriations Acts

BILLING CODE 4910–57–C

Appendix A—FTA Regional Offices

Region 1: Richard H. Doyle, Regional Administrator, Cambridge, MA 02142–1093, Tel. 617–494–2055, Fax 617–494–2865.

Region 2: Letitia Thompson, Regional Administrator, New York, NY 10004–1415, Tel. No. 212–668–2170, Fax 212–668–2136.

Region 3: Herman Shipman, Deputy Regional Administrator, Philadelphia, PA 19103–4124, Tel. 215–656–7100, Fax 215–656–7100.

Region 4: Hiram J. Walker, Regional Administrator, Atlanta, GA 30303, Tel. 404–562–3500, Fax 404–562–3505.

Region 5: Joel P. Ettinger, Regional Administrator, Chicago, IL 60606, Tel. 312–353–2789, Fax 312–886–0351.

Region 6: Robert C. Patrick, Regional Administrator, Fort Worth, TX 76102, Tel. 817–978–0550, Fax 817–978–0575.

Region 7: Mokhtee Ahmad, Regional Administrator, Kansas City, MO 64106, Tel. 816–329–3920, Fax 816–329–3921.

Region 8: Lee O. Waddleton, Regional Administrator, Denver, CO 80202–5120, Tel. 303–844–3242, Fax 303–844–4217.

Region 9: Leslie T. Rogers, Regional Administrator, San Francisco, CA 94105–1926, Tel. 415–744–3133, Fax 414–744–2726.

Region 10: Rick Krochalis, Regional Administrator, Seattle, WA 98174–1002, Tel. 206–220–7954, Fax 206–220–7959.

[FR Doc. 04–12544 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9663]

Notice of Workshop on Headlamp Safety Metrics; Balancing Visibility and Glare

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of workshop on Headlamp Safety Metrics; Balancing Visibility and Glare.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will conduct a technical workshop to discuss the current state of knowledge regarding the development and use of safety-related metrics for evaluating forward lighting systems. A diverse group of automotive lighting, vision, and safety experts will be invited to make presentations regarding their views and research on this topic. The presentations will focus on approaches for developing safety-related metrics as a basis for evaluating and quantifying the tradeoff between glare and visibility needed to enhance nighttime driving safety and mobility for all road users. The workshop participants will discuss what steps can be taken in terms of research for evaluating the safety impact of new lighting technologies.

DATE AND TIME: The workshop will be held on July 13, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The workshop will be held at the Capitol Holiday Inn, Discovery Ball Room, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: If you are interested in attending, please register for the workshop by contacting Jenny O'Rourke by July 2, 2004, at (202) 366–4850 or *Jennifer.O'Rourke@nhtsa.dot.gov*. Please note that the attendance will be limited to the first 50 registrants due to space limitations. For technical questions, contact Michael Perel, Office of Vehicle Safety Research, at (202) 366–5675 or *Mike.Perel@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Technology advances in automotive forward lighting may help drivers see further, but can also increase glare that could affect the safe mobility of other drivers. This glare may be not only bothersome, but possibly detrimental to safety. Existing regulations for automotive lighting have been developed to balance the visibility benefits with the glare consequences based on older filament lamp technologies. New, more efficient light sources and advanced optics may alter this balance. To evaluate the tradeoffs between visibility and glare, metrics are needed that represent the safety impact of forward lighting photometric performance.

The workshop is primarily intended for technical experts in the fields of driving performance, vehicle lighting, and vision. Through a combination of invited lectures and group discussions among attendees, a dialogue will be started to help define glare and visibility and to identify useful approaches for developing metrics and safety limits. This workshop will not address changes to NHTSA policies or regulations regarding glare. Topics will include: Physiology of the visual system, visual requirements for driving, new forward lighting technologies, and measuring the impact of forward lighting on safety.

The handouts and other information presented at the workshop will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of the materials will be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The material may also be accessed electronically at *http://dms.dot.gov*, at Docket No. NHTSA–02–13957.

The handouts and other information presented at the workshop will also be available on NHTSA's Web site at URL *http://www-nrd.nhtsa.dot.gov/departments/nrd-01/presentations/presentations.html*.

Should it be necessary to cancel the meeting due to inclement weather or any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site at URL *http://www.nhtsa.dot.gov/nhtsa.announce/meetings/*. If you do not have access to the Web site, you may call for information at the contact listed above and leave your telephone or telefax number. You will be contacted only if the meeting is canceled.

Issued on: May 26, 2004.

Joseph N. Kanianthra,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 04–12500 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17901; Notice 1]

Yokohama Tire Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

Yokohama Rubber Co., Ltd. of Tokyo Japan has determined that certain tires that it manufactured in 2000 do not comply with S4.3(c) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "New pneumatic tires." Yokohama Tire Corporation (Yokohama) on behalf of Yokohama Rubber Co., Ltd. has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Yokohama has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Yokohama's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Yokohama Rubber Co., Ltd. produced size 185R14 8PR Y356 tires during 2002 whose load range is "D" but are incorrectly labeled on the tire sidewall

as having a load range "C," adjacent to the correct ply rating "D." Therefore, they do not comply with FMVSS No. 109 S4.3(c), which requires that "each tire shall have permanently molded into or onto both sidewalls * * * (c) Maximum load rating." Although 424 tires were manufactured with the incorrect load range, 294 of the tires were found and quarantined to prevent sales and distribution. However 130 tires are unaccounted for and are considered distributed and sold into the United States market. It is these 130 tires that are the subject of this petition.

Yokohama believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Yokohama states that reliance upon the misbranding of load range "C" would not pose any threat to motor vehicle safety since the tire's actual carrying capability by specification is load range "D." "The tires' true capability exceeds that of * * * operating if the 'C' load range designation is used by the customer to determine load capacity and inflation."

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 6, 2004.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.)

Issued on: May 27, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–12616 Filed 6–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub-No. 26X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Ashland County, Wi

Wisconsin Central Ltd. (WCL) [1] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.48-mile line of railroad from milepost 435.35 on Ashland's lakefront and traveling 2,552 feet to a point where it connects to a private spur that used to serve C. Reiss Coal Company in Ashland, Ashland County, WI. The line traverses United States Postal Service Zip Code 54806.

WCL has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (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 3, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by June 14, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 23, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WCL's representative: Michael J. Barron, Jr., 17641 S. Ashland Avenue, Homewood, IL 60430–1345.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

WCL has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. SEA will issue an environmental assessment (EA) by June 8, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board,. Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [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), WCL shall file a notice of consummation with the Board to signify it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by June 3, 2005, and there are no legal or regulatory barriers

[1] WCL is a Class I common carrier which owns and operates approximately 1,800 miles of rail line in four Upper Midwestern states. WCL also is a wholly owned subsidiary of Canadian National Railway Company.

[2] 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 so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1102.2(f)(25).

[4] Each trail use request must be accompanied by the filing fee, which currently is set at $200. *See* 49 CFR 1002.2(f)(27).

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.*

Decided: May 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–12560 Filed 6–2–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Financial Management Service gives notice of a proposed new Privacy Act system of records entitled "Treasury/FMS .004—Education and Training Records."

DATES: Comments must be received no later than July 6, 2004. The proposed new system of records will become effective July 13, 2004, unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to Tom Longnecker, Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday. You may send your comments by electronic mail to *tom.longnecker@fms.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Tom Longnecker, Disclosure Officer, (202) 874–6837.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Financial Management Service (FMS) is proposing to establish a new system of records entitled "Treasury/FMS .004—Education and Training Records." FMS offers various training opportunities, including financial management and accounting training, for employees of government agencies, as well as other individuals (for example, contractors who may work with the government in the financial management area or representatives of foreign governments) on a fee-for-service basis. For purposes of this notice, individuals who enroll and participate in the training classes are referred to as "training participants". In order to administer the training and collect service fees and maintain accurate records, FMS must collect and maintain information related to the training participants' enrollment and participation. To ensure that class and enrollment status, class completion information, transcripts and certificates of completion are maintained accurately, FMS collects and maintains the training participant's name, social security number (SSN) and contact information (for example, title, address, organization, work phone number and email address). The training participant's SSN will be used to verify the accurate retention of records pertaining to the participant and to distinguish them from other participants or payers in this system. Furnishing of their SSN and the other requested information is voluntary. However, failure to provide any part of the requested information may delay the processing of their access request and may require additional unique information before the participant is granted access to FMS training. To validate records concerning service fee payments made by or on behalf of training participants, FMS also collects and maintains payment information (for example, credit card information or information contained in the Federal Government's Standard Form 182—Request, Authorization, Agreement, and Certification of Training or DD 1556—Request, Authorization, Agreement, Certification of Training and Reimbursement).

FMS continually seeks to modernize its training program. Through its Learning Management System (LMS), FMS is initiating a new self-service program that allows, among other things, the FMS customer to check class offerings and the status of a class, enroll in a class or cancel an enrollment, and initiate payment for training via the Internet. FMS collects information submitted by the training participant via the LMS government Web site, which is subject to various security measures described in this notice. Collecting information from the training participant via the Internet allows FMS to efficiently provide training and payment processing services to its customers. With continual improvement in technology, FMS expects to develop more automated means to collect and report service fees for training and financial information in the future.

As the LMS is password protected, a visit to the initial Learner ID/Password page (log-on screen) of the LMS Internet site is not tracked nor are cookies employed. The number of 'hits' to the log-on screen is tracked. However, no individual record information is recorded or tracked. If the visitor subsequently creates an account on the LMS or successfully accesses the LMS by using the proper Learner Code and Password, and thereby become a training participant, session cookies are used to track subsequent 'internal' LMS locations visited by that participant. Additionally, incorrect log-on attempts exceeding the maximum allowed for an established training participant account may be tracked in order to lock out the affected account for security purposes.

Once LMS access is gained, the LMS maintains a log of the various internal Web pages a training participant visits in order to make the LMS site more useful to training participants; for IT security purposes to monitor for improper behavior violating the LMS–FMS Rules of Behavior, and to facilitate collection of payment from the government agencies and individuals by documenting training participant activity (*i.e.*, enrollment fee, late or cancellation fees).

FMS recognizes that security needs (*i.e.*, the need to verify the identity of the individual) must be balanced with privacy concerns (*i.e.*, the need to protect an individual's personal information), and therefore, seeks to limit the collection of personal information to only that which is needed for the processing of training information. FMS maintains safeguards, both electronically and in its training processes, to protect personal and financial data from risks such as the unauthorized access to records and inadvertent disclosure of confidential information. FMS employs safeguards to ensure that the training data is accessible by authorized users only.

Not every transaction will require the collection or disclosure of all of the information listed under "Categories of records in the system." The categories of records cover the broad spectrum of information that might be required for various types of transactions that specifically support FMS' training and education program. It is noted that the proposed system covers records obtained in connection with the various mechanisms that are either used currently (for example, LMS) or may be used in the future for electronic training program processes. FMS has attempted to cover the information needed for the various types of transactions processed in today's technological environment, as

well as the information that might be required in connection with future security needs or yet-to-be developed mechanisms (*i.e.*, those systems or mechanisms developed in the future that specifically address required delivery and/or collection of personnel related information or authentication of the user).

FMS recognizes the sensitive nature of the personal and financial information collected from the training participant and has safeguards in place to protect the information from theft or inadvertent disclosure. As appropriate, FMS' contractual arrangements with commercial software and hardware vendors include provisions that require compliance with the Privacy Act and preclude the vendors from retaining, disclosing, and using for other purposes the information provided by FMS to the vendor. In addition to various procedural and physical safeguards, access to computerized records is limited, through the use of encryption, access codes, and other internal mechanisms, to those whose official duties require access solely for the purposes outlined in the proposed system. Access to the system is granted only as authorized by the FMS LMS security manager after appropriate security procedures are followed, such as background checks and/or non-disclosure statements are signed. The information in the Education and Training Records system will allow the training participant to enjoy the benefits of training and education related technology while minimizing the risks of fraudulent activity and possible disclosure of personal information.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

For the reasons set forth in the preamble, FMS proposes a new system of records Treasury/FMS .004–Education and Training Records which is published in its entirety below.

Dated: May 26, 2004.

Jesus H. Delgado-Jenkins,

Acting Assistant Secretary for Management.

TREASURY/FMS .004

SYSTEM NAME:

Education and Training Records—Treasury/FMS.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, 401 14th ST., SW., Washington, DC 20227; Financial Management Service, U.S. Department of the Treasury, 1990 K Street, NW., Suite 300, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Government employees (including separated employees, in certain cases) and other individuals who access and apply for FMS training services.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Personal Profile—Account Record;
(2) Transcript Record;
(3) Enrollment Status Record;
(4) Job Skills Record;
(5) Individual Development Plan Record;
(6) Assessment Performance Results Record;
(7) Managerial Approval/Disapproval Status Record;
(8) Class Roster Record;
(9) Certificate—Training Program Status Record;
(10) Class Evaluation Record;
(11) Payment Record;
(12) Statistical Reports—retrievable by names: (a) Personnel Transcript Report, (b) Class Enrollment Report, (c) Class Payment/Billing Report, (d) Status of Training Report, (e) Ad hoc Training Report, and (f) Other similar files or registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3720.

PURPOSE(S):

.The purpose of this system is to maintain records about Government employees and other individuals who participate in FMS' education and training program. The information contained in the records will assist FMS in properly tracking individual training and accurately account for training revenue and expenditures generated through the FMS' training programs (for example, Learning Management System (LMS)). For FMS personnel, the records contained in FMS' training records will also assist managers' active participation in their employees' learning plans. FMS maintains the information necessary to ensure that FMS keeps accurate records related to classes, including a training participant's training and enrollment status, class completion information, transcripts and certificates of accomplishment. FMS also maintains the records to ensure that financial records pertaining to a training participant's payment for training fees are maintained accurately. FMS' training records will serve to report receipts to the appropriate Federal agency (currently the Treasury Department's Bureau of Public Debt) responsible for maintaining FMS' financial records for training. Finally, the information contained in the covered records will be used for collateral purposes related to the training processes, such as the collection of statistical information on training programs, development of computer systems, investigation of unauthorized or fraudulent activity related to submission of information to FMS for training program purposes and the collection of debts arising out of such activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Federal agencies, financial institutions, and contractors for the purpose of performing financial management services, including, but not limited to, processing payments, investigating and rectifying possible erroneous reporting information, testing and enhancing related computer systems, creating and reviewing statistics to improve the quality of services provided, or conducting debt collection services;

(5) Federal agencies, their agents and contractors for the purposes of facilitating the collection of receipts, determining the acceptable method of collection, the accounting of such receipts, and the implementation of programs related to the receipts being collected as well as status of their personnel training, statistical training information;

(6) Financial institutions, including banks and credit unions, and credit card companies for the purpose of collections and/or investigating the accuracy of information required to complete transactions using electronic methods and for administrative purposes, such as resolving questions about a transaction;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(8) Foreign governments in accordance with formal or informal international agreements and maintain proper administrative or financial controls related to the training activity;

(9) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(10) Federal agencies, their agents and contractors, credit bureaus, and employers of individuals who owe delinquent debt when the debt arises from the unauthorized use of electronic payment methods. The information will be used for the purpose of collecting such debt through offset, administrative wage garnishment, referral to private collection agencies, litigation, reporting the debt to credit bureaus, or for any other authorized debt collection purpose, and

(11) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in electronic media, such as server hard drive, magnetic back-up tape storage, removable optical storage backup media (such as compact disc (CD) or Digital Video Disc {DVD}) and hard copy.

RETRIEVABILITY:

All captured data (both personal and course) and information can be retrieved as required for the proper administration of the system, within the LMS software's capability. Generally, for training purposes, these records will be retrieved by Class Name and/or Organization Name and Participant Name. For financial purposes, these records will generally be by Name, Organization and payment information (Credit Card, Form 182, DD Form 1556, for example).

SAFEGUARDS:

All records are maintained in a secured building, secured room, and locked cabinets. FMS personnel access to training data is primarily for the purpose of using the training services or administering the LMS. For technical and administrative purposes, non-FMS personnel access is limited to contractors who are maintaining the LMS system in the normal performance of their duties and have completed non-disclosure statements and undergone security background checks consistent with their access in accordance with the existing contract.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with General Records Schedules issued by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Treasury Agency Services, Financial Management Service, U.S. Department of the Treasury, 1990 K Street, NW., Suite 300, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See **RECORD ACCESS PROCEDURES** above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by: The individual on whom the record is maintained; the individual's employer, other governmental agency or educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–12559 Filed 6–2–04; 8:45 am]
BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Mutual to Stock Conversion Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before July 6, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information

collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Mutual to Stock Conversion Application.

OMB Number: 1550–0014.

Form Number: OTS Forms 1680, 1681, 1682, and 1683.

Regulation requirement: 12 CFR part 563b.

Description: These information collections are contained in 12 CFR part 563b, which states that a mutual association must obtain written approval by OTS prior to converting to a stock association, and sets forth the guidelines for obtaining such approval.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 7.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 510 hours.

Estimated Total Burden: 3,570 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: May 27, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–12589 Filed 6–2–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—General Reporting and Recordkeeping by Savings Associations

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before July 6, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, e-mail to *Mark_D._Menchik@omb.eop.gov*, or fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments @ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: General Reporting and Recordkeeping by Savings Associations.

OMB Number: 1550–0011.

Form Number: N/A.

Regulation requirement: 12 CFR 544.8, 545.96(c), 552.11, 562.1, 562.4, 563.1, 563.47(e), 563.76(c), 572.6(b), 584.1(f); 12 CFR 230.3, 230.4, 230.5, 230.6; and 12 CFR 330.14(h)(1), (h)(2), and (h)(3).

Description: This collection of information allows management of savings associations to exercise prudent controls and to provide OTS with a means of determining the integrity of savings association records and operations when examining for safety, soundness, and regulatory compliance.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 921.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 3,649,335 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: May 27, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–12590 Filed 6–2–04; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Thursday,
June 3, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Arabis perstellata (Braun's Rock-cress); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI74

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Arabis perstellata (Braun's Rock-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule

SUMMARY: We, the Fish and Wildlife Service (Service), designate critical habitat for *Arabis perstellata* (Braun's rock-cress) pursuant to the Endangered Species Act of 1973, as amended (Act). This endangered species is restricted to two counties (Rutherford and Wilson) in Tennessee and three counties (Franklin, Owen, and Henry) in Kentucky. We are designating 22 specific geographic areas (units) in Kentucky (17 units) and Tennessee (5 units) as critical habitat for *Arabis perstellata*. These units encompass approximately 648 hectares (ha) (1,600 acres (ac)) of upland habitat. Kentucky has approximately 328 ha (810 ac) and Tennessee has approximately 320 ha (790 ac) designated as critical habitat for *Arabis perstellata*.

In the development of this final rule, we solicited and considered data and comments from the public on all aspects of this designation, including data on economic and other impacts of the designation. This publication also provides notice of the availability of the final economic analysis for this designation.

DATES: This rule becomes effective on July 6, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Tennessee Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501.

You may obtain copies of the final rule or the economic analysis from the field office address above, by calling (931) 528–6481, or from our Internet site at *http://cookeville.fws.gov*.

If you would like copies of the regulations on listed wildlife or have questions about prohibitions and permits, please contact the appropriate State Ecological Services Field Office: Tennessee Field Office, (**ADDRESSES** above), or the Kentucky Field Office, U.S. Fish and Wildlife Service, 3761 Georgetown Road, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the Tennessee Field Office address above (telephone (931) 528–6481, extension 211; facsimile (931) 528–7075).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 36 percent (445 species) of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Arabis perstellata (Braun's rock-cress) is a perennial herb of the mustard

family (Brassicaceae). It was originally described by E. Lucy Braun (1940) from specimens collected between 1936 and 1939 in Franklin County, Kentucky (see the proposed rule at 69 FR 4274, January 9, 2004, for complete information on characteristics, life history, and forest associates). While the final rule for the determination of endangered status for this species recognized the two varieties, these two varieties are no longer recognized by the scientific community. Consequently, we will treat the plants that occur in both geographically separated areas as one species (*Arabis perstellata*) for the purpose of designating critical habitat.

Two non-native species (*Alliaria petiolata* (European garlic mustard) and *Lonicera maackii* (amur honeysuckle) compete directly with *Arabis perstellata* for areas of natural disturbance once it has become established in a forest. Management schemes for the control of these species are being tested, but these nonnative plant species continue to spread into natural areas. The presence of these species and competition for available habitat and resources poses a severe threat to *Arabis perstellata*. Native plant species may also be an invasive threat to *Arabis perstellata*, particularly *Toxicodendron radicans* (poison ivy), *Parthenocissus quinquefolia* (Virginia creeper), and *Galium aparine* (bedstraw or cleavers). These species may spread rapidly in response to habitat changes and compete with *Arabis perstellata* (D. Lincicome, pers. comm. 2004).

Arabis perstellata is never a common component of the ground flora. It usually occurs in small groups (especially around rock outcrops) or as scattered individuals. The small size of the populations, the species' specialized habitat, and its apparent inability to expand into available or similar habitats suggests that it is a poor competitor. This inability to compete has likely limited its distribution and abundance. This species cannot withstand vigorous competition from invasive weeds or even native herbaceous species.

Arabis perstellata occurs on slopes composed of calcium carbonate, calcium, or limestone in moderately moist to almost dry forests (see proposed rule 69 FR 4274 for further information on habitat requirements). The soils at *Arabis perstellata* sites are limestone-derived, and a rock outcrop component is usually present in the soil complex (see proposed rule, 69 FR 4274, for more information on soil requirements). *Arabis perstellata* is presently known from 42 populations in two separate sections of the Interior Low Plateaus Physiographic Province—the Blue Grass Section (Kentucky) and the Central Basin Section (Tennessee). Both areas where this species is found are predominantly underlain by sediments of Ordovician age (510–438 million years ago) (Quarterman and Powell 1978). The Kentucky populations occur in Franklin, Henry, and Owen counties along the Kentucky River and its tributaries (primarily Elkhorn Creek). The Tennessee populations occur in Rutherford and Wilson counties, principally along the Stones River.

Within the Bluegrass Section of the Interior Low Plateaus in Kentucky, the Lexington Limestone Formation is common on the slopes entrenched by the Kentucky River and its major drainages (McDowell 1986). All but one of the Kentucky populations of *Arabis perstellata* are found on the Grier and Tanglewood members of this formation. The exception is the population in Henry County, Kentucky, occurring on what is mapped as Kope and Clays Ferry members, which have a higher shale component (Service 1997). However, the plants actually occur on limestone outcrops at this site similar to the populations found in the Grier and Tanglewood members.

In Tennessee, *Arabis perstellata* sites are restricted to the Central Basin Section, which, like the Blue Grass Section, is underlain by Ordovician limestone. The primary rocks of the *Arabis perstellata* populations in Rutherford and Wilson Counties are Leipers and Catheys Limestone, as well as Bigby-Cannon Limestone (Wilson 1965, 1966a, 1966b).

The majority of the land containing *Arabis perstellata* populations is in private ownership. One site (Clements Bluff) in Kentucky is owned by the State and is part of the Kentucky River Wildlife Management Area. This publicly owned site is under no formal management agreement at this time. One privately owned site, Strohmeiers Hills in Kentucky, is under a management agreement with the Kentucky Natural Heritage Program. Management activities include sediment and noxious weed control. The agreement is nonbinding and does not restrict the property owner's activities or property rights. Thus, the only protection granted by the management agreement is habitat enhancement.

The primary threats to this species are alteration or loss of habitat through development (primarily home and road construction), competition with native and exotic weedy species, grazing and trampling, and timber harvesting. *Arabis perstellata* is vulnerable to extinction because of its very small range, low abundance, and declining number of populations. Thirty-seven extant populations are known from Kentucky and six in Tennessee. The full range of this species in Kentucky is an approximately 518-square-kilometer (200-square-mile) area, with six disjunct populations in Tennessee. This narrow range makes the species vulnerable to potential catastrophic phenomena, such as disease, extreme weather, and insect infestations. Also, population levels are declining (Deborah White, KSNPC, pers. comm. 2003). Eight sites previously known in Kentucky were found to be extirpated during 1996 (KSNPC 1996a). Four previously known populations in Tennessee are presumed extirpated (Jones 1991; Tennessee Department of Environment and Conservation 2000).

Previous Federal Action

Federal Government actions on this species began with passage of section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). On January 3, 1995, (60 FR 56), we published our final rule to list *Arabis perstellata* as endangered. Please refer to the final listing rule for a complete description of Federal actions concerning this species between the inception of the Act and publication of the final listing determination. In the final rule, we found that a critical habitat designation was not prudent.

On July 22, 1997, we finalized the *Arabis perstellata* Recovery Plan (Service 1997). The recovery plan established the criteria that must be met prior to the delisting of *Arabis perstellata*. The recovery plan also identified the actions that are needed to assist in the recovery of *Arabis perstellata*.

On October 12, 2000, the Southern Appalachian Biodiversity Project filed suit against us, challenging our not prudent critical habitat determinations for *Arabis perstellata* and 15 other federally listed species (*Southern Appalachian Biodiversity Project* v. *U.S. Fish and Wildlife Service, Babbitt, & Clark* (CN 2:00–CV–361 (E.D. TN))). On November 8, 2001, the District Court of the Eastern District of Tennessee issued an order directing us to reconsider our previous prudency determinations and submit a new prudency determination and, if appropriate, proposed critical habitat designation for *Arabis perstellata* to the **Federal Register** no later than May 26, 2003, and a final decision not less than 12 months after the new prudency determination.

On June 3, 2003, we published a proposed rule in the **Federal Register** (68 FR 33058) which included a finding that critical habitat designation was prudent for *Arabis perstellata*. We

proposed 20 specific geographic areas (units) in Kentucky (17 units) and Tennessee (3 units) as critical habitat for *Arabis perstellata*. These units encompassed approximately 408 ha (1,008 ac). Kentucky had approximately 328 ha (810 ac) and Tennessee had approximately 80 ha (198 ac) proposed. During the comment period, which ended on August 4, 2003, we received comments from the Tennessee Division of Natural Heritage (TDNH) providing new information regarding the Tennessee populations of *Arabis perstellata*. During a survey conducted by TDNH staff in the spring and early summer of 2003, the distribution of *Arabis perstellata* was found to be more widespread at the three extant populations (Units 18, 19, and 20) and two new populations were documented (Grandfather Mountain and Versailles Knob). As a result of this information, we revised our critical habitat designation in Tennessee to include the additional areas. A revised proposed rule was published in the **Federal Register** (69 FR 4274) on January 29, 2004. In this supplemental proposed rule, we increased the designated critical habitat acreage in Tennessee from 80 ha (198 ac) to 320 ha (790 ac). We accepted public comments on the revised proposed rule and the revised draft economic analysis until March 1, 2004.

Summary of Comments and Recommendations

In the June 3, 2003, proposed rule and notice of document availability (68 FR 33058), we requested that all interested parties submit comments or information concerning the designation of critical habitat and/or the draft economic analysis for *Arabis perstellata*. We contacted appropriate Federal, State, and local agencies, county government, elected officials, scientific organizations, and other interested parties and invited them to comment on the proposed critical habitat for *Arabis perstellata*. We provided notification of these documents through e-mail, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We sent press releases to the following newspapers on March 29, 2004: The Tennessean, Nashville, Tennessee; State Journal, Frankfort, Kentucky; The Daily News Journal, Murfreesboro, Tennessee; and the Owenton News Herald, Owenton, Kentucky. We posted copies of the proposed critical habitat and draft economic analysis on the Service's Tennessee Field Office Internet site following their release.

Based on substantial new information received during the first public comment period, we revised the proposed critical habitat in Tennessee to include two additional areas determined to be essential to the conservation of *Arabis perstellata* and expand the extent of three additional areas that had been already proposed. These revisions to proposed critical habitat, reopening of comment period, and notice of availability of revised draft economic analysis were published in the **Federal Register** on January 29, 2004 (69 FR 4274). We requested that all interested parties submit comments or information concerning the revised designation of critical habitat and/or the revised draft economic analysis for *Arabis perstellata* by March 1, 2004. We again contacted appropriate Federal, State, and local agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment on the revised proposed critical habitat and/or revised draft economic analysis for *Arabis perstellata*. We also provided notification of these documents through e-mail, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We additionally posted the revised proposed rule and economic analysis on the Service's Tennessee Field Office Internet site following their release.

During the first public comment period, we received comments from five parties, which included one Federal agency, two State agencies, one non-profit agency, and one individual. Of the five parties responding, one supported the proposed designation, three were neutral, and two wanted additional areas added to the critical habitat proposal. None were opposed. Four additional comments were received during the second public comment period. One was from a State agency, two were from non-profit agencies, and one from an individual. Three supported the proposed designation and one was neutral.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from four knowledgeable individuals who have expertise with the species, with the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. We received comments from three of the four peer reviewers. These are included in the summary below and incorporated into this final rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat and the draft economic analysis. Substantive comments received during the two comment periods have either been addressed below or incorporated directly into this final rule. The comments were grouped according to peer review or public comments. For readers' convenience, we have assigned comments to major issue categories, and we have combined similar comments into single comments and responses.

Peer Review Comments

(1) *Comment:* The Tennessee Department of Environment and Conservation (TDEC) provided additional information concerning four plant species that may invade *Arabis perstellata* habitat and compete with *Arabis perstellata* for habitat and resources. These plant species include one additional non-native plant, *Lonicera maackii* (amur honeysuckle) and three native plants, *Toxicodendron radicans* (poison ivy), *Parthenocissus quinquefolia* (Virginia creeper), and *Galium aparine* (bedstraw or cleavers).

Our Response: We acknowledge that these additional native and non-native plants can invade *Arabis perstallata* habitat particularly when the habitat is disturbed due to natural or man-made reasons. We have included a discussion of these additional potentially invasive plant species in the Background section of this rule and their potential threat to *Arabis perstallata*.

(2) *Comment:* The fourth occurrence of *Arabis perstallata* in Tennessee at the Shelby Bottoms Greenway site along the Cumberland River in Davidson County has recently been identified and verified as *Arabis shortii* (Short's rock-cress).

Our Response: The Shelby Bottoms Greenway site along the Cumberland River in Davidson County was not included in our initial proposed critical habitat designation on June 3, 2003, (68 FR 33058) because the area where the population occurred did not contain one or more of the primary constituent elements and was not considered to be essential to the conservation of *Arabis perstallata*. Since this information was received during our first public comment period, we included a discussion of it and its relevance to this designation in our revisions to proposed critical habitat on January 29, 2004, (69 FR 4274).

(3) *Comment:* A survey for *Arabis perstallata*, unrelated to this critical habitat designation, was conducted in the spring and early summer of 2003 by the TDEC personnel. During this survey, the documented extent of the distribution and abundance of *Arabis*

perstallata was expanded at three occurrences in Tennessee. Additionally, two new populations of *Arabis perstallata* were documented in Rutherford and Wilson Counties, Tennessee. As a result of this new information, the critical habitat designation in Tennessee does not include all of the areas essential to the conservation of *Arabis perstallata.*

Our Response: We acknowledged in the June 3, 2003, proposal (68 FR 33058) that we had received new information from TDEC regarding two new populations of *Arabis perstellata*, but due to time and budget constraints, we were unable to adequately and formally analyze them for inclusion as proposed critical habitat in that document. We stated that we would conduct the required analysis of these two sites to determine if the areas are essential to the conservation of *Arabis perstellata.* If the areas were found to be essential, our intent was to include them in the final designation. We found during the original public comment period that all the existing sites in Tennessee had additional unknown plants, and that a new site was also discovered in Rutherford County. Upon receiving this information, we analyzed all five sites (additions to three extant sites plus the two new sites) and determined that they are all essential to the conservation of *Arabis perstallata.* We then proposed revisions to the original proposed critical habitat designation that included the additional sites that have been documented in Tennessee. These revisions were published in the **Federal Register** on January 29, 2004 (69 FR 4274), along with the reopening of the comment period (30 days) and the notice of availability of the revised draft economic analysis. We believe that, based on the best available information, we have designated as critical habitat the areas essential to the conservation of *Arabis perstallata.*

(4) *Comment:* The Kentucky State Nature Preserves Commission (KSNPC) provided updated information for the site identified as critical habitat Unit 12 and for a new population of *Arabis perstallata* located geographically between critical habitat Unit 6 and Unit 8 on the west side of the Kentucky River. They believed that this new information should be taken into consideration during the development of the final designation.

Our Response: We greatly appreciate the new information concerning *Arabis perstallata* provided by KSNPC. Following a review of this information we determined that these areas are not essential to the conservation of the species. The criteria used for selecting essential sites can be found in the June 3, 2003, proposed designation of critical habitat for *Arabis perstallata* (please refer to the Critical Habitat section of the proposed rule (68 FR 33058) and this final rule), but generally included a combination of the recovery plan objectives and criteria, and the four primary constituent elements. According to the recovery plan, *Arabis perstellata* will be considered for delisting when 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, are protected in Kentucky and Tennessee, and it has been demonstrated that the populations are stable or increasing after five years of monitoring following reclassification to threatened status. At this time, we believe the areas we have designated as critical habitat in Kentucky and Tennessee are adequate to provide for the conservation of the species.

Public Comments

(5) *Comment:* The Natural Resources Conservation Service (NRCS) in Tennessee addressed the issue of whether the proposed critical habitat would impact the Wildlife Habitat Incentives Program and/or the Environmental Quality Incentives Program that they administer. Based on the allowable practices under each program and the type of habitat (*i.e.*, steep, rocky terrain) proposed as critical habitat for *Arabis perstellata*, NRCS projected very few informal consultations under section 7 of the Act would be required as a result of the designation of critical habitat. They further indicated that they should not experience a significant economic impact as a result of the designation.

Our Response: We concur with NRCS's findings that the critical habitat designation in Tennessee would result in few, if any, section 7 consultations on the Wildlife Habitat Incentives and/or the Environmental Quality Incentives Programs. We also do not believe NRCS would experience a significant economic impact from the designation of critical habitat in Tennessee. This assertion is further supported by the information contained within our economic analysis of the designation of critical habitat for *Arabis perstallata.*

(6) *Comment:* One commenter asked whether we just designated everything as critical without an analysis of how much habitat an evolutionarily significant unit needs.

Our Response: In section 3(5)(A) of the Act, critical habitat is defined as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside of the geographical area occupied by the species * * * [that] are essential to the conservation of the species". Pursuant to the Act and our implementing regulations, we must determine whether the designation of critical habitat for a given species is prudent and determinable. If it is both, then we conduct a focused analysis to determine and delineate the specific areas, within the geographical area occupied by the species, that contain the physical and biological features essential to the conservation of the species. Once these areas are defined, a determination is then made as to whether additional specific areas outside of the geographical area occupied by the species are required for the conservation of the species. In conducting our analyses, we use the best available scientific and commercial data available. Our analyses take into consideration specific parameters including (1) space for individual and population growth and normal behavior; (2) food, water, air, light, minerals or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproductions, rearing of offspring, germination or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historical or ecological distribution of the species (50 CFR 424.12(b)). Consequently, we do take into consideration all available information concerning a species, its habitat, ecology, and threats and conduct an analysis to determine which specific areas are essential to its conservation. This final designation of critical habitat for *Arabis perstellata* has been developed using the approach discussed above and constitutes our best assessment of the areas essential to its conservation.

Further, the phrase, "evolutionarily significant unit" is used by the National Marine Fisheries to distinguish distinct populations or evolutionary segments of anadromous salmon species. It reflects that authority under the Act to consider distinct population segments of vertebrate species for addition to the lists of threatened and endangered species. However, the Act only allows listing of plants at the species and subspecies level, so the "evolutionarily significant unit" concept cannot be applied to federally listed plant species under our jurisdiction.

(7) *Comment:* The proposed rule to designate critical habitat for *Arabis*

perstellata did not discuss the extent of private lands encompassed within the boundaries of the proposal.

Our Response: On page 33064 of our proposed rule (June 3, 2003, 68 FR 33058) we have included a table, Table 1—Approximate Area (Hectares and Acres) of Proposed Critical Habitat by Unit for *Arabis perstellata*, that clearly identifies the extent of private land in the proposal by critical habitat unit. This table is similarly included in this final rule and has been updated to incorporate the revisions to critical habitat identified in our January 29, 2004, notice (69 FR 4274). Additionally, in the June 3, 2003, proposed critical habitat rule, the January 29, 2004, notice, and this final rule, landownership is discussed in the textual descriptions for each critical habitat unit under the section titled "Critical Habitat Unit Descriptions".

(8) *Comment:* The agency's approach to critical habitat must be improved by banning hunting, trapping, grazing, logging, mining, snowmobile use, ATV (all terrain vehicles) use, and Jet Ski use in these areas immediately. Such uses cause pollution and are anti-environmental and must be banned to preserve endangered plants and animals.

Our Response: Activities such as mining, snowmobile use, and Jet Ski use are not known to occur in areas being designated as critical habitat for *Arabis perstellata* since the proper landscape and/or use areas for such activities do not exist within any of the critical habitat units. Additionally, activities such as hunting, trapping, and ATV use are unlikely to occur in areas being designated as critical habitat for *Arabis perstellata* due to the steep, rocky slopes this plant occupies. We have no records of any adverse impact to *Arabis perstellata* or its habitat from these three uses. We acknowledged in the June 3, 2003, proposed critical habitat rule that grazing and timber harvesting (logging) are potential threats to the species. This critical habitat designation will serve to control those potential threats only to the extent that they are part of a Federal action subject to a consultation under section 7 of the Act. We are committed to working with the private and public landowners regarding the conservation of *Arabis perstellata* and the need to protect the species and its habitat.

(9) *Comment:* One commenter stated the belief that the text in the sections, Designation of Critical Habitat Provides Little Additional Protection to Species, Role of Critical Habitat in Actual Practice of Administering and Implementing the Act, and Procedural and Resource Difficulties in Designating Critical Habitat, of the proposed rule is factually inaccurate on three specific topics: (1) That critical habitat provides little additional protection to species, (2) that there are insufficient budgetary resources and time to designate critical habitat for listed species, and (3) that the statement, "these measures * * * may make the difference between extinction and survival for many species" applies a standard of survival which is different than the standard of conservation that is mandated by the Act.

Our Response: While we understand and appreciate the concerns raised by the commenter, we respectfully disagree.

As discussed in the sections, Designation of Critical Habitat Provides Little Additional Protection to Species, Role of Critical Habitat in Actual Practice of Administering and Implementing the Act, and Procedural and Resource Difficulties in Designating Critical Habitat and other sections of this and other critical habitat designations, we believe that, in most cases, conservation mechanisms provided through section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative programs with private and public landholders and tribal nations provide greater incentives and conservation benefits than does the designation of critical habitat.

As iterated in the sections, Designation of Critical Habitat Provides Little Additional Protection to Species, Role of Critical Habitat in Actual Practice of Administering and Implementing the Act, and Procedural and Resource Difficulties in Designating Critical Habitat, we have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize our activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs. As an example, in FY 2003, the Service estimated that there was a gap of $1,995,757 between our FY 2003 appropriation and the total cost of complying with court orders and settlement agreements in FY 2003. This funding shortfall was caused by several circumstances. A number of court orders that were issued after the Service compiled its budget request dramatically increased the amount of funding needed for judicially-mandated critical habitat work. In addition, before the critical habitat work required by the courts had exceeded the amount of the FY 2003 budget request, the Service entered into a number of court-approved settlements requiring us to perform further critical habitat work in FY 2003. Several critical habitat actions also required a greater expenditure of resources than the Service anticipated. With the $6,000,000 of critical habitat funding that was available in FY 2003, we completed 32 critical habitat designations pursuant to court orders and settlement agreements. However, we were not able to complete work on 21 critical habitat actions for 30 species, which had court-ordered deadlines requiring critical habitat actions to be completed after July 28, 2003, due to insufficient resources.

(10) *Comment:* The critical habitat proposal does not go far enough to protect habitat for the species' recovery. The commentor urges the Service to include areas historically occupied by *Arabis perstellata*.

Our Response: The delisting criteria identified in the recovery plan for *Arabis perstellata* requires 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, protected in Kentucky and Tennessee. Additionally, those populations must be stable or increasing after five years of monitoring following reclassification to threatened status. Because critical habitat is defined as those specific areas essential to the conservation of the species, and since the Act defines conservation similarly to recovery, we have based the designation of critical habitat for *Arabis perstellata* on the criteria necessary to delist or recover the species. Consequently, we have designated units containing 22 (17 in Kentucky and 5 in Tennessee) populations that will meet the criteria for being geographically distinct, self-sustaining, and consisting of 50 or more plants. Therefore, we believe that we have adequately identified and designated as critical habitat those areas essential to the conservation of *Arabis perstellata*. We do not believe that designating additional historically occupied habitat is essential to the conservation of this species. Please refer to the Criteria Used to Identify Critical Habitat section of this final rule for further discussion of the criteria used in

the development of this final designation.

(11) *Comment:* We received some general comments on population viability analysis (PVA) and how it can be used to suggest where habitat restoration can make a significant contribution to species survival.

Our Response: While PVAs can be useful scientific and conservation tools in certain situations, we did not believe, in this case, a PVA was necessary to determine the physical and biological features, and therefore, the specific areas, that are essential to the conservation of *Arabis perstellata*. We believe that the biological and scientific analyses conducted during the development of the recovery plan for this species was sufficient to identify the amount of habitat and number of populations, including specific habitat and population criteria, to recover the species. As previously discussed, we based this critical habitat designation on those criteria established for the recovery plan, and believe them to be adequate to conserve the species.

(12) *Comment:* The commentor noted that our maps of proposed critical habitat contained in the June 3, 2003, **Federal Register** (68 FR 33072 and 33086) are textbook designs of fragmentation. The commentor requested that where possible, we should establish habitat connectivity to prevent genetic isolation of the existing populations.

Our Response: We acknowledge that our understanding of the genetic exchange between populations of *Arabis perstellata* is limited. We believe, and the experts agree, that *Arabis perstellata* is most likely pollinated by insects, but we do not know whether it is self-fertile. Jones (1991) assumed that the plants are pollinated by insects, most likely by small flies and bees. Seed dispersal is likely occurring through wind or gravity rather than animal movements, as this species has no specific morphological (structural) mechanisms such as hooks or burs for seed dispersal. Seeds are probably most commonly dispersed downslope. Also, the species requires specialized habitat and appears to show some inability to expand into available or similar habitats. This inability to compete has likely limited its distribution and abundance. Therefore, habitat connectivity does not appear to be a limiting factor since 17 populations in two counties in Kentucky and 5 populations in two counties in Tennessee are thriving under present conditions. We believe that our present critical habitat designations contain habitat that is essential to the conservation of this species.

(13) *Comment:* We received a comment that the limestone soils that *Arabis perstellata* needs are a perfect example of habitat specialization and, therefore, these specialized areas must be protected.

Our Response: We are designating those specific areas that are defined by the physical and biological features essential to the conservation of *Arabis perstellata* based on the criteria for delisting identified in the recovery plan. As discussed in the Primary Constituent Elements section of the final rule and the previous proposal, limestone substrates are identified as a primary constituent element for *Arabis perstellata*. Therefore, lands containing limestone substrates that also contain self-sustaining populations of 50 or more plants of *Arabis perstellata* are being designated as critical habitat and afforded the protections thereof.

(14) *Comment:* Stones River National Battlefield in Rutherford County, Tennessee, has been identified as having viable populations of *Arabis perstellata*. The commentor requests that we designate critical habitat at Stones River National Battlefield and any other areas on public lands where the species could be reintroduced.

Our Response: Based on our current information regarding this species, it is not known to occur at Stones River National Battlefield nor does this public land have suitable habitat for the reintroduction of *Arabis perstellata*. Additionally, we are not aware of any public lands that have suitable habitat for the reintroduction of this species in Kentucky or Tennessee. However, we welcome any additional specific information concerning locations of *Arabis perstellata* and habitat defined by the primary constituent elements as being essential to its conservation.

(15) *Comment:* In conducting our economic analyses of critical habitat designations pursuant to section 4(b)(2) of the Act, we must solicit data regarding all economic impacts associated with a listing as part of the critical habitat designation, including sections 9 and 10 of the Act.

Our Response: We are not required by statute or implementing regulation to collect information pertaining to and consider economic impacts associated with the listing of a species, even while conducting the required economic impact analyses for critical habitat pursuant to section 4(b)(2) of the Act. However, because it may be difficult to distinguish potential economic effects resulting from a species being listed as endangered or threatened relative to those potential economic effects resulting from designating critical habitat for a species, we often collect economic data associated with the species being listed to provide for a better understanding of the current economic baseline from which to make more informed decisions as we conduct our required analyses under section 4(b)(2) of the Act. This approach is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*, 248 F.3d 1277 (2001).

(16) *Comment:* The final rule designating critical habitat for *Arabis perstellata* must include an explanation of the cost/benefit analysis for both why an area was included and why an area was excluded.

Our Response: Pursuant to section 4(b)(2) of the Act, we are required to take into consideration the economic impact, national security, and any other relevant impact of specifying any particular area as critical habitat. We also may exclude any area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, providing that the failure to designate such area will not result in the extinction of the species. We use information from our economic analysis, or other sources such as public comments, management plans, etc., to conduct this analysis. For us to consider excluding an area from the designation, we are required to determine that the benefits of the exclusion outweigh the benefits (*i.e.*, biological or conservation benefits) of including the specific area in the designation. This is not simply a monetary cost/benefit analysis, however. This is a policy analysis, and can include consideration of the impacts of the designation, the benefits to the species from the designation, as well as policy considerations such as national security, tribal relationships, impacts on conservation partnerships and other public policy concerns. This evaluation is done on a case-by-case basis for particular areas based on the best available scientific and commercial data. A decision to exclude an area is discretionary with the Secretary. There is no requirement that we conduct a cost/benefit analysis for including areas within critical habitat, or that we must exclude an area based on our analysis of costs and benefits.

(17) *Comment:* The final rule must clearly explain why specific areas with the essential features may be in need of special management considerations or protection.

Our Response: Please refer to the Background, Primary Constituent Elements, Need for Special Management Consideration or Protection sections,

and Critical Habitat Unit Descriptions sections of this rule for a more detailed discussion of needs for special management and protections. However, at this time we are not aware of any special management or protections afforded the physical and biological features defined by the critical habitat units.

(18) *Comment:* As currently drafted, the proposed rule evidences major analytical gaps, resulting in many miles of water crossing four States being "critical habitat" (and triggering the concomitant regulatory burdens such designations impose) without the adequate data or analysis to support such a decision.

Our Response: Critical habitat for *Arabis perstellata* is only being designated in Kentucky and Tennessee and encompasses only upland habitat. We have conducted the required analysis (see "Criteria Used to Identify Critical Habitat" above and the final Economic Analysis) and determined that out of the 42 known *Arabis perstellata* sites, only 22 sites are essential for the conservation of this species.

Summary of Changes From the Proposed Rule

Other than minor clarifications and incorporation of additional information on the species' range in Tennessee, we made three substantive changes to our designation:

(1) We modified one of the primary constituent elements to include *Lonicera maackii* as another nonnative species that is noted to have negatively impacted *Arabis perstellata* populations in Tennessee.

(2) Critical units 18, 19, and 20 in Tennessee were increased in size and two new units were added in Tennessee upon obtaining new information from TDEC during the first comment period. The revised designation for Tennessee was increased from 80 ha (198 ac) to 320 ha (790 ac).

(3) The location coordinates associated with Unit 2 and Unit 12 in Kentucky were discovered to be incorrect when we were making the reviews for this final rule. We have changed the coordinates for these two units and have verified the coordinates for all units to ensure that they are correct.

Critical Habitat

Please refer to the proposed rule to designate critical habitat for the *Arabis perstellata* for a general discussion of sections 3, 4, and 7 of the Act and our policy in relation to the designation of critical habitat (68 FR 33058; June 3, 2003).

A. Methods

As required by section 4(b) of the Act and its implementing regulations (50 CFR 424.12), this proposal is based on the best scientific and commercial information available concerning the species' current and historical range, habitat, biology, and threats. In preparing this rule, we reviewed and summarized the current information available on *Arabis perstellata*, including the physical and biological features that are essential for the conservation of the species (see "Primary Constituent Elements" section), and identified the areas containing these features. The information used includes known locations, our own site-specific species and habitat information, statewide Geographic Information System (GIS) coverages (*e.g.*, soils, geologic formations, and elevation contours), the Natural Resources Conservation Service's soil surveys, the final listing rule for *Arabis perstellata*; recent biological surveys and reports; peer-reviewed literature; our final recovery plan; and discussions and recommendations from *Arabis perstellata* experts.

B. Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to focus on those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Much of what is known about the specific physical and biological requirements of *Arabis perstellata* is described in the "Background" section of this rule and the previously published proposed rule (69 FR 4274). The designated critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Arabis perstellata* throughout its range, and to provide those physical or biological features essential for the conservation of the species. These physical or biological features provide for the following—(1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy (Constituent element 1, 2, 3, and 4.); (2) areas that provide basic requirements for growth, such as water, light, and minerals (Constituent element 1, 2, and 4); and (3) areas that support populations of pollinators and seed dispersers (Constituent element 1, 2, and 4); and (4) habitats that are representative of the historic geographical and ecological distribution of the species (Constituent element 1, 2, 3, and 4). Based on the occurrence of this species and field data, all of these physical or biological features are essential to the conservation of the species.

We believe the conservation of *Arabis perstellata* is dependent upon a number of factors, including the conservation and management of sites where existing populations grow and the maintenance of normal ecological functions within these sites. The areas we are designating as critical habitat provide some or all of the physical or biological features essential for the conservation of this species.

Based on the best available information, primary constituent elements essential for the conservation of *Arabis perstellata* are:

(1) Relatively undisturbed, closed canopy mesophytic and sub-xeric forest with large, mature trees (such as sugar maple (*Acer saccharum*), chinquapin oak (*Quercus muhlenbergii*), hackberry (*Celtus occidentalis*), or Ohio buckeye (*Aesculus glabra*)), and

(2) Open forest floors with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination, and

(3) Areas with few introduced weed species such as *Alliaria petiolata* or *Lonicera maackii,* and

(4) Rock outcrops on moderate to steep calcareous slopes defined by:

(a) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky and the Lebanon, Carters, Leipers, and Catheys, and Bigby-Cannon Limestones in Tennessee; and

(b) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

Based on the specific requirements of this species, units contain many of the same physical and biological features. Management, therefore, will address both the maintenance of these features and the reduction of threats specific to each unit.

C. Criteria Used to Identify Critical Habitat

We considered several factors in the selection of specific areas for critical habitat for *Arabis perstellata*. We assessed the final recovery plan objectives and criteria, which emphasize the protection of populations throughout a significant portion of the species' range in Kentucky and Tennessee. According to the criteria identified in the recovery plan, *Arabis perstellata* will be considered for delisting when 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, are protected in Kentucky and Tennessee, and it has been demonstrated that the populations are stable or increasing after five years of monitoring following reclassification to threatened status. Because of the proximity of occurrences of *Arabis perstellata*, protected populations must be distributed throughout the species' range in order to decrease the probability of a catastrophic event impacting all the protected populations.

Following the completion of the final recovery plan and during the development of the proposed critical habitat designation for *Arabis perstellata*, two additional populations were discovered in Tennessee. The discovery of these two populations was discussed in the proposed critical habitat rule, but due to the court-ordered date for completion of the proposed rule there was insufficient time to conduct the appropriate analysis to determine if these two populations were essential to the conservation of the species and should be included in the designation. We subsequently conducted an analysis of these populations based on the criteria identified in the final recovery plan and the physical and biological features essential to the conservation of the species (*i.e.*, primary constituent elements) identified herein. On the basis of that analysis and the determination that the protection of the two additional sites in Tennessee, where there were previously only three populations (all meeting the recovery and critical habitat criteria), will provide for greater long-term survivability and conservation of the species, we determined that these two newly discovered populations are essential to the conservation of *Arabis perstellata*. As such, they were proposed to be included in the designation in a revised proposed rule published in the **Federal Register** (69 FR 4274) on January 29, 2004, and have been subsequently included in this final designation bringing the total number of sites to 22.

Our approach to delineating specific critical habitat units, based on the recovery criteria outlined above, focused first on considering all areas of suitable habitat within the geographic distribution of this species and the known locations of the extant and historic populations. We evaluated field data collected from documented occurrences, various GIS layers, soil surveys, and United States Geological Survey (USGS) quadrangle maps. These data include *Arabis perstellata* locations, soils, elevation, topography, geologic formations, streams, and current land uses.

Based on information concerning historical occurrences of *Arabis perstellata*, there were historically a total of 56 populations, nine populations in Tennessee and 47 in Kentucky. Four of the populations in Tennessee and ten in Kentucky no longer have plants or the primary constituent elements (Jones 1991; Tennessee Department of Environment and Conservation 2000), and therefore, are not considered to be essential to the conservation of *Arabis perstellata*.

Of the 42 remaining historic locations of *Arabis perstellata* in Kentucky (37) and Tennessee (5), we identified 20 as having fewer than 50 plants and degraded habitat. These sites are, therefore, not considered to be essential to the conservation of *Arabis perstellata*. The 22 remaining locations contain populations of *Arabis perstellata* in which greater that 50 plants have been documented and the primary constituent elements for the species as defined in this rule. These 22 locations are considered to be essential to the conservation of *Arabis perstellata*, and as such, are being designated as critical habitat.

The 22 units in this designation include a considerable part, but not all, of the species' historic range. They all contain the primary constituent elements essential for the conservation of *Arabis perstellata* (see "Primary Constituent Elements" section). The omission of historically occupied sites and the rest of the currently occupied sites from this critical habitat designation should not diminish their individual or cumulative importance to the species. Rather, it is our determination that the habitat contained within the 22 units included in this final rule constitutes our best determination of areas essential for the conservation of *Arabis perstellata*. The 22 units we are designating as critical habitat encompass approximately 648 ha (1,600 ac) in Kentucky and Tennessee.

To the extent feasible, we will continue, with the assistance of other State, Federal, and private researchers, to conduct surveys, research, and conservation actions on the species and its habitat in areas designated and not designated as critical habitat. If additional information becomes available on the species' biology, distribution, and threats, we will evaluate the need to revise critical habitat, or refine the boundaries of critical habitat as appropriate. Sites that are occupied by this plant that are not being designated for critical habitat will continue to receive protection under the Act's section 7 jeopardy standard where a Federal nexus may occur (see "Critical Habitat" section).

D. Mapping

Once we determined that 22 populations are essential to the conservation of *Arabis perstellata*, we used site-specific information to determine the extent of these populations. The designated critical habitat units were delineated by screen digitizing polygons (map units) using ArcView, a computer Geographic Information Systems (GIS) program. Based on the known plant distribution and allowing for downslope germination, we placed boundaries around the populations that included the plants, as well as their primary constituent elements. In defining these critical habitat boundaries, we made an effort to exclude all developed areas, such as housing developments, open areas, and other lands unlikely to contain the primary constituent elements essential for the conservation of *Arabis perstellata*. We used Kentucky State Plane North/North American Datum 1983 (NAD83) coordinates to designate the boundaries of the designated critical habitat in Kentucky and Tennessee State Plane/NAD83 coordinates to designate the boundaries of the designated critical habitat in Tennessee.

E. Need for Special Management Consideration or Protection

An area designated as critical habitat contains one or more of the primary constituent elements that are essential to the conservation of the species (see "Primary Constituent Elements" section). When designating critical habitat, we assess whether the areas

determined to be essential for conservation may require special management considerations or protection. Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. Critical habitat designations apply only to Federal activities or those funded or authorized by a Federal agency.

The primary threats to this species rangewide are alteration or loss of habitat through development (primarily home and road construction), competition with native and exotic weedy species, grazing and trampling, and timber harvesting. Various activities in or adjacent to each of the critical habitat units described in this final rule may affect one or more of the primary constituent elements that are found in the unit. These activities include, but are not limited to, ground disturbances that destroy or degrade primary constituent elements of the plant, activities that directly or indirectly affect *Arabis perstellata* plants or underlying seed bank, activities that encourage the growth of *Arabis perstellata* competitors, and activities that significantly degrade or destroy *Arabis perstellata* pollinator populations.

The majority of the land containing *Arabis perstellata* populations is in private ownership. One site (Clements Bluff) in Kentucky is owned by the State and is part of the Kentucky River Wildlife Management Area. This publicly owned site is under no formal management agreement at this time. One privately owned site, Strohmeiers Hills in Kentucky, is under a management agreement with the Kentucky Natural Heritage Program. Management activities include sediment and noxious weed control. The agreement is nonbinding and does not restrict the property owner's activities or property rights. Thus, the only protection granted by the management agreement is habitat enhancement.

We have determined that the critical habitat units may require special management or protection, largely because no long-term protection or management plans exist for any of the units and due to the existing threats to this plant. Absent special management or protection, these 22 units are susceptible to existing threats and activities such as the ones listed in the "Effects of Critical Habitat" section, which could result in degradation and disappearance of the populations and their habitat.

F. Critical Habitat Designation

Table 1 summarizes the location and extent of designated critical habitat. We provide general descriptions of the boundaries of designated critical habitat units below.

TABLE 1. APPROXIMATE AREA (HECTARES AND ACRES) OF CRITICAL HABITAT BY UNIT FOR *Arabis perstellata*.

Critical habitat unit	County/state	Land ownership	Hectares	Acres
1. Sky View Drive	Franklin/Kentucky	Private	22	54
2. Benson Valley Woods	Franklin/Kentucky	Private	37	91
3. Red Bridge Ridge	Franklin/Kentucky	Private	6	15
4. Trib to South Benson Ck	Franklin/Kentucky	Private	10	25
5. Davis Branch	Franklin/Kentucky	Private	3	7
6. Onans Bend	Franklin/Kentucky	Private	12	30
7. Shadrock Ferry Road	Franklin/Kentucky	Private	15	37
8. Hoover Site	Franklin/Kentucky	Private	83	205
9. Longs Ravine Site	Franklin/Kentucky	Private	30	74
10. Strohmeiers Hills	Franklin/Kentucky	Private	20	49
11. U.S. 127	Franklin/Kentucky	Private	11	27
12. Camp Pleasant Branch	Franklin/Kentucky	Private	14	35
13. Saufley	Franklin/Kentucky	Private	8	20
14. Clements Bluff	Owen/Kentucky	State	11	27
15. Monterey U.S. 127	Owen/Kentucky	Private	12	30
16. Craddock Bottom	Owen/Kentucky	Private	23	57
17. Backbone North	Franklin/Kentucky	Private	11	27
18. Scales Mountain	Rutherford/Tennessee	Private	103	255
19. Sophie Hill	Rutherford/Tennessee	Private	53	132
20. Indian Mountain	Rutherford/Tennessee	Private	87	214
21. Grandfather Knob	Wilson/Tennessee	Private	43	106
22. Versailles Knob	Rutherford/Tennessee	Private	34	83
Total			648	1,600

G. Critical Habitat Unit Descriptions

We are designating a total of 22 critical habitat units for *Arabis perstellata* in Kentucky and Tennessee—14 critical habitat units in Franklin County, Kentucky; three units in Owen County, Kentucky; four units in Rutherford County, Tennessee; and one unit in Wilson County, Tennessee. In order to provide determinable legal descriptions of the critical habitat boundaries, we drew polygons around these units, using as criteria the plant's primary constituent elements, the known extent of the populations, and the elevation contours on the map. We made an effort to avoid developed areas that are unlikely to contribute to the conservation of *Arabis perstellata*. Areas within the boundaries of the mapped units such as buildings, roads, clearings, transmission lines, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. As such, Federal actions limited to these areas would not trigger consultation pursuant to section 7 of the Act, unless they affect the species or primary constituent elements in the critical habitat.

On the basis of the best available scientific and commercial information, we determined that the 22 critical habitat units contain the primary constituent elements essential to the conservation of *Arabis perstellata*. Additionally, these 22 sites represent the only known *Arabis perstellata* populations that meet the recovery criteria of being geographically distinct, self-sustaining, and containing 50 or more plants. These 22 sites contain the highest-quality populations in terms of

size and habitat that are presently known. The remaining known populations (20) of *Arabis perstellata* do not meet these criteria, because each has fewer than 50 plants occurring on degraded sites, making their long-term viability questionable. As such, based on the best available information, we do not believe that these 20 sites are essential to the conservation of *Arabis perstellata*.

A brief description of each of these critical habitat units is given below. The population information presented in all of the unit descriptions was taken from the KSNPC's Natural Heritage Database for the Kentucky units and the TDEC's Natural Heritage Database for the Tennessee units. Information on threats to specific units is provided where available.

Based on the specific requirements of this species, units contain many of the same physical and biological features. Management, therefore, will address both the maintenance of these features and reduction of threats specific to each unit. Generally, *Arabis perstellata* requires relatively undisturbed, closed canopy mesophytic and sub-xeric forest with large, mature trees (*e.g.*, sugar maple (*Acer saccharum*), chinquapin oak (*Quercus muhlenbergii*), hackberry (*Celtus occidentalis*), or Ohio buckeye (*Aesculus glabra*)). Removal of canopy trees may result in detrimental effects on *Arabis perstellata*. This species also requires open forest floors with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination. Minimization of unnatural disturbance (*e.g.*, trampling, grazing) may be managed through fencing or other access restrictions around features important to the species and existing populations. Areas with few introduced weeds such as *Alliaria petiolata* or *Lonicera maackii* are important because of the competition existing between the species. *Arabis perstellata* is a poor competitor with very specific habitat requirements. Therefore, removal of invasive species is already used in management for this species and will likely be used in future management.

Arabis perstellata is found specifically on rock outcrops on moderate to steep calcareous slopes. Additionally, the plant appears to prefer Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky and the Lebanon, Carters, Leipers, and Catheys, and Bigby-Cannon Limestones in Tennessee; and Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee. *Arabis perstellata* has been documented on these specific soil series. While management measures may be limited, protection of these soils and rock outcrops in the range of this species is important.

Unit 1. Sky View Drive in Franklin County, Kentucky

Unit 1 is located on the west side of the City of Frankfort. It occurs along U.S. 127 and Skyview Drive on the slopes of the first large ravine system due west of the confluence of Benson Creek and the Kentucky River. It contains approximately 22 ha (54 ac), all of which are privately owned. This site was first observed to have *Arabis perstellata* in 1979. In 2001, surveys conducted by the KSNPC found over 150 plants, but not all habitat was surveyed. The majority of the plants occur on the west- and south-facing slopes and are associated with bare soil on trails and tree bases (Kentucky State Nature Preserves 2003).

Unit 2. Benson Valley Woods in Franklin County, Kentucky

Unit 2 is located west of the City of Frankfort. The unit lies southeast of Benson Valley Road on the south side of Benson Creek. It is privately owned and contains approximately 37 ha (91 ac). The plants occur on the southeast-facing slope. They were first observed in 1979. KSNPC personnel last observed more than 200 plants in 2001. The site is threatened by trampling and competition by weeds (Kentucky State Nature Preserves 2003).

Unit 3. Red Bridge Ridge in Franklin County, Kentucky

Unit 3 is located west of Kentucky (KY) Highway 1005, at the confluence of South Benson and Benson Creeks. The site is privately owned. It is approximately 6 ha (15 ac) in size. Plants at this site were first observed in 1987. In 1990, 75 plants were found along the southeast- and northwest-facing slopes (Kentucky State Nature Preserves 2003).

Unit 4. Tributary to South Benson Creek in Franklin County, Kentucky

This unit is located northeast of the City of Frankfort. It occurs along the southeast side of South Benson Creek and the north and south slopes of an unnamed tributary. The site is in private ownership and is 10 ha (25 ac) in size. In 1996, over 1,000 plants were found along the northwest-facing lower, mid, and upper slopes, making this one of the best sites in Kentucky for *Arabis perstellata* (Kentucky State Nature Preserves 2003).

Unit 5. Davis Branch in Franklin County, Kentucky

This unit occurs along the east side of Harvieland Drive and Davis Branch. This unit contains approximately 3 ha (7 ac) and is privately owned. Plants were first observed at this site in 1990. In 2001, hundreds of plants were found along the south-facing slope throughout the ravine system (Kentucky State Nature Preserves 2003).

Unit 6. Onans Bend in Franklin County, Kentucky

Unit 6 occurs north of Onans Bend Road and east of KY Highway 12. The unit lies along the banks of an unnamed stream near its mouth with the west bank of the Kentucky River. This unit is privately owned and contains approximately 12 ha (30 ac). Plants at this unit were first observed in 1979. In 1990, more than 100 plants were found on the south-facing slope. The plants were exceptionally vigorous. The site is threatened by weed competition (Kentucky State Nature Preserves 2003).

Unit 7. Shadrock Ferry Road in Franklin County, Kentucky

This unit is located along the north side of Shadrock Ferry Road (KY Highway 898). Property at this location is in private ownership. This unit is approximately 15 ha (37 ac) in size. Plants were first observed at this site in 1996. In 2001, several hundred plants were found on the south-facing slope (Kentucky State Nature Preserves 2003).

Unit 8. Hoover Site in Franklin County, Kentucky

This unit lies northwest of the City of Frankfort, along the west side of the Kentucky River on slopes bordering two unnamed tributaries. Plants are widely scattered in small groups along the Kentucky River bluff from river kilometer (km) 98.6 to 101.7 (river mile 61.3 to 63.2). This unit is in private ownership and contains approximately 83 ha (205 ac). The plants were first observed in 1990. In 1996, hundreds of plants were found (Kentucky State Nature Preserves 2003).

Unit 9. Longs Ravine Site in Franklin County, Kentucky

Unit 9 is located north of the City of Frankfort and Lewis Ferry Road. This unit lies east of the Kentucky River in a large ravine and along the steep slopes above the river. This unit is privately owned. There is approximately 30 ha (74 ac) in this unit. In 1990, more than 250 plants were found on the northeast,

southwest, and northwest-facing slopes (Kentucky State Nature Preserves 2003).

Unit 10. Strohmeiers Hill in Franklin County, Kentucky

This unit is located south of the Town of Swallowfield and adjacent to Strohmeier Road and U.S. 127. It occurs on steep slopes on the south side of Elkhorn Creek and on the east bank of the Kentucky River, south of the confluence with Elkhorn Creek. The plants at this site were first observed in 1930. The property is privately owned. The site is approximately 20 ha (49 ac) in size. In 1994, the site contained more than 200 flowering plants. The plants were exceptionally vigorous and occurred throughout a large area, making this one of the best populations of *Arabis perstellata* in Kentucky (Kentucky State Nature Preserves 2003).

Unit 11. U.S. 127 in Franklin County, Kentucky

Unit 11 is located along the east side of U.S. 127 in a ravine just southeast of Elkhorn Creek. The site is privately owned. This unit is approximately 11 ha (27 ac) in size. The plants were first observed in 2001, at which time approximately 100 plants were found on the west-facing slope (Kentucky State Nature Preserves 2003).

Unit 12. Camp Pleasant Branch Woods in Franklin County, Kentucky

Unit 12 is located along the south side of Camp Pleasant Road (KY Highway 1707). This site is privately owned and contains approximately 14 ha (35 ac). The first observance of plants at this site was in 1987. In 2001, over 100 plants were found along the lower northwest-facing slope. Plants at this site are threatened by competition from weeds (Kentucky State Nature Preserves 2003).

Unit 13. Saufley in Franklin County, Kentucky

Unit 13 occurs west of the KY Highway 1900 bridge over Elkhorn Creek on the hillside above the creek. The land ownership for this unit is private. The site is approximately 8 ha (20 ac) in size. Plants were first observed in 1988. In 1996, more than 100 hundred plants were found along the top of the ridge on the northeast-facing slope (Kentucky State Nature Preserves 2003).

Unit 14. Clements Bluff in Owen County, Kentucky

This unit is located in a ravine facing the Kentucky River along the east side of KY Highway 355. The site is owned by the State of Kentucky and is part of the Kentucky River Wildlife Management Area. This unit is approximately 11 ha (27 ac) in size. The plants were first observed at this site in 1980 on the north-facing slope. In 1996, approximately 100 plants occurred at the site (Kentucky State Nature Preserves 2003).

Unit 15. Monterey U.S. 127 in Owen County, Kentucky

Unit 15 is located 1.6 km (1 mile) north of the City of Monterey, just north of the junction of U.S. 127 and KY Highway 355. The property is privately owned. It is approximately 12 ha (30 ac) in size. Plants were first observed at this site in 1996. In 1997, 150 plants were found along the southwest-facing slope of an unnamed tributary to the Kentucky River. The site is being threatened by weedy competition (Kentucky State Nature Preserves 2003).

Unit 16. Craddock Bottom in Owen County, Kentucky

This unit is located south of the City of Monterey. It occurs along the west side of Old Frankfort Pike on the west-facing slope just east of Craddock Bottom. Property at this site is privately owned. The site contains approximately 23 ha (57 ac). In 1996, over 150 plants were found. In 1996, there was evidence of logging in the surrounding area (Kentucky State Nature Preserves 2003).

Unit 17. Backbone North in Franklin County, Kentucky

Unit 17 is located north of KY Highway 1900. It occurs in an old river oxbow west of the existing Elkhorn Creek and is privately owned. The unit size is approximately 11 ha (27 ac). Plants were first observed at this site in 1981. In 1990, more than 200 plants were found on the southeast-facing slope (Kentucky State Nature Preserves 2003).

Unit 18. Scales Mountain in Rutherford County, Tennessee

This unit is located west of the City of Murfreesboro on Scales Mountain, 1.6 km (1 mile) south of Highway 96. The site is privately owned. This unit is 103 ha (255 ac) in size and consist of three knobs. Plants were first observed at this site in 1985 only on the easternmost knob. In 2003, the central and eastern knobs contained more than 200 plants and the western knob contained more than 100 plants (Tennessee Department of Environment and Conservation 2003). The primary threat to this site is competition from weeds.

Unit 19. Sophie Hill in Rutherford County, Tennessee

Unit 19 is located west of the City of Murfreesboro on Sophie and Townsel Hills which lies between Newman and Coleman Hill Roads. The properties at these sites are privately owned. The unit is approximately 53 ha (132 ac) in size and consists of two hills. The first observance of *Arabis perstellata* on this site was in 1991 on Sophie Hill. In 2000, more than 200 plants were found on the northwest side of Sophie Hill. In 2003, in excess of 300 plants were documented on the adjacent Townsel Hill. Due to the physical proximity of the two locations, Sophie Hill and Townsel Hill, we believe that the occurrences of *Arabis perstellata* documented at these sites are one population, containing over 500 standing plants (Tennessee Department of Environment and Conservation 2003).

Unit 20. Indian Mountain in Rutherford County, Tennessee

Unit 20 is located west of the City of Murfreesboro on Indian Mountain between Highway 96 and Coleman Hill Road. This site is privately owned. The unit size is approximately 87 ha (214 ac) and consists of three knobs. In 2000, over 2,600 plants were found on the eastern and central knobs. In 2003, *Arabis perstellata* was documented at two locations on the western knob and consisted of more than 300 plants. Because of the proximity of the occurrences, it is assumed that these occurrences constitute one population. This unit is the best site for *Arabis perstellata* in Tennessee. Logging is the biggest threat to this exceptional site (Tennessee Department of Environment and Conservation 2003).

Unit 21. Grandfather Knob in Wilson County, Tennessee

This unit is located 1.8 km (1.1 miles) west of Cainesville between State Route 266 (Cainesville Road) and Spain Hill Road. This site is privately owned. The unit is 43 ha (106 ac) in size and consists of two sites that contain *Arabis perstellata* in excellent habitat. These plants were located in 2003 and represent the first documented occurrence of *Arabis perstellata* in Wilson County. More than 100 plants occur at the two sites, and due to their physical proximity, we believe that they comprise a single population. This population is 32 km (20 miles) from the nearest extant *Arabis perstellata* population in Tennessee (Tennessee Department of Environment and Conservation 2003). This population is an important find because it could

reduce the likelihood of one catastrophic event destroying all populations in Tennessee (Units 18, 19, and 20 all occur within close proximity of each other).

Unit 22. Versailles Knob in Rutherford County, Tennessee

Unit 22 is located 1.3 km (0.8 mile) south of Versailles between Versailles Road and Bowles Road. The property at this site is privately owned. The unit size is approximately 34 ha (83 ac). This population was first discovered in 2003 and contains more than 200 plants. This population is 18 km (11 miles) from the nearest extant *Arabis perstellata* population in Tennessee, making this, like Unit 21, important to the long-term persistence of the species in Tennessee (Tennessee Department of Environment and Conservation 2003).

Effects of Critical Habitat Designation

ESA Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding. Please refer to the proposed rule to designate critical habitat for *Arabis perstellata* for a detailed discussion of section 7 of the Act in relation to the designation of critical habitat (68 FR 33058; June 3, 2003).

There are no known populations of *Arabis perstellata* occurring on Federal lands. However, activities on private, State, or city lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act, a permit under section 10(a)(1)(B) of the Act from us, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration (FHWA), Federal Aviation Administration, or Federal Emergency Management Agency); permits from the Department of Housing and Urban Development; activities funded by the U.S. Environmental Protection Agency (EPA), Department of Energy, or any other Federal agency; and construction of communication sites licensed by the Federal Communications Commission will be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of *Arabis perstellata* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Ground disturbances that destroy or degrade primary constituent elements of the plant (*e.g.*, clearing, tilling, grading, construction, road building, etc.);

(2) Activities that directly or indirectly affect *Arabis perstellata* plants or underlying seed bank (*e.g.*, herbicide application that could degrade the habitat on which the species depends, incompatible introductions of non-native herbivores, incompatible grazing management, clearing, tilling, grading, construction, road building, etc.);

(3) Activities that encourage the growth of *Arabis perstellata* competitors (*e.g.*, widespread fertilizer application, road building, clearing, logging, etc.); and

(4) Activities that significantly degrade or destroy *Arabis perstellata* pollinator populations (*e.g.*, pesticide applications).

Previous Section 7 Consultations

Several section 7 consultations for Federal actions affecting *Arabis perstellata* and its habitat have preceded this critical habitat proposal. The action agencies have included the USACE, U.S. Department of Agriculture Rural Development, FHWA, and EPA.

Since *Arabis perstellata* was listed on January 3, 1995 (60 FR 56), we have conducted 33 informal and no formal consultations involving *Arabis perstellata*. The informal consultations, all of which concluded with a finding that the proposed Federal action would not affect or would not likely adversely affect *Arabis perstellata*, addressed a range of actions including highway and bridge construction, maintenance of utility lines (*e.g.*, water and sewer lines) along existing roads, and building construction.

The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact the following Service offices:

Kentucky—Frankfort Ecological Services Office (502/695–0468)
Tennessee—Cookeville Ecological Services Office (931/528–6481)

To request copies of the regulations on listed wildlife and plants, and for inquiries regarding prohibitions and permits, please contact the U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (telephone 404/679–4176; facsimile 404/679–7081).

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific information available, and that we consider the economic impact, national security, and any other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We have completed an analysis of the economic impacts of designating these areas as critical habitat. The economic analysis was conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*, 248 F.3d 1277 (2001). It was available for public review and comment during the comment periods for the proposed rule. The final economic analysis is available from our Web site at *http://cookeville.fws.gov* or by contacting our Tennessee Field Office (*see* **ADDRESSES**).

The largest single category of costs expected from this designation of critical habitat is attributable to technical assistance efforts (approximately 33 percent, or $91,000) involving consultation under section 7 of the Act. Forestry projects will be most

affected by the designation, with consultations comprising about 27 percent of the total economic impact. In addition to forestry projects, activities potentially affected by the designation of critical habitat for *Arabis perstellata* are utilities, development, and road construction and maintenance. The total expected cost of this designation in present value terms is $47,000 to $209,000, or about $7,000 to $30,000 per year. This range reflects the range in estimates of the number of consultations for forestry and utilities activities, and the range in administrative consultation costs.

Benefits arising from designation of critical habitat for *Arabis perstellata* may include preservation of the endangered species, increased support for conservation efforts, the education/information value of the designation, and reduced uncertainty regarding the extent of essential *Arabis perstellata* habitat.

Pursuant to section 4(b)(2) of the Act, we must consider any other relevant impact of designating critical habitat for *Arabis perstellata* in addition to economic impacts. We determined that the lands within the designation of critical habitat for *Arabis perstellata* are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for *Arabis perstellata*, and the designation does not include any Tribal lands or trust resources. There is currently one management plan in existence for the species. Strohmeiers Hills in Kentucky, is under a management agreement with the Kentucky Natural Heritage Program. The agreement is nonbinding and does not restrict the property owner's activities or property rights. We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation.

Based on the best available information including the prepared economic analysis, we believe that all of these units are essential for the conservation of this species. Our economic analysis indicates an overall low cost resulting from the designation. Therefore, we have found no areas for which the benefits of exclusion outweigh the benefits of inclusion, and so have not excluded any areas from this designation of critical habitat for *Arabis perstellata* based on economic impacts.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. As such, the Office of Management and Budget (OMB) has reviewed this rule. We prepared an economic analysis of this action to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft economic analysis was made available for public comment and we considered those comments during the preparation of this rule. The economic analysis indicates that this rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government.

Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions related to critical habitat on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Because of the potential for impacts on other Federal agencies' activities, we reviewed this action for any inconsistencies with other Federal agency actions. Based on our economic analysis and information related to implementing the listing of the species such as conducting section 7 consultations, we believe that this designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency, nor will it materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000.

SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA (*Mid-Tex Electric Co-op Inc.* v. *F.E.R.C.*, 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. *U.S. E.P.A.*, 175 F.3d 1027, (D.C. Cir. 1999)).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We applied the "substantial number" test

individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Arabis perstellata*.

Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we believe this will result in minimal additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since *Arabis perstellata* was listed in 1995, we have conducted only 33 informal and no formal consultations involving this species. Most of these consultations involved Federal projects or permits to businesses that do not meet the definition of a small entity (*e.g.*, Federally sponsored projects). Also, a number of USACE permit actions involved other large public entities (*e.g.*, State-sponsored activities) that do not meet the definition of a small entity. No formal consultations involved a non-Federal entity. However, about five informal consultations were on behalf of a private business. Most of these informal consultations were utility-related (*e.g.*, water lines, sewer lines, and gas lines), some being proposed by small entities. We do not believe that the number of utility-related small entities meets the definition of substantial described above. Therefore, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

The economic analysis identified activities that are within, or will otherwise be affected by, section 7 of the Act for *Arabis perstellata*. These activities may lead to section 7 consultation with us, and in some cases specific projects may be modified in order to protect *Arabis perstellata* and/or its habitat. All of the projects that are potentially affected by section 7 implementation for *Arabis perstellata* are expected to involve either no project modifications, or minor project modifications or opportunity costs. The greatest share of the costs associated with the consultation process typically stems from project modifications (as opposed to the consultation itself). Indeed, costs associated with the consultation itself are relatively minor, with third party costs estimated to range from $1,200 to $4,100 per consultation, including the cost of technical assistance. The analysis predicted that the following agencies and activities will be the most impacted by section 7 consultation:

- Timber stand improvement plans (Natural Resources Conservation Service)
- Road construction and maintenance (Federal Highway Administration)
- Commercial development (Army Corps of Engineers)
- Utilities construction and maintenance (Tennessee Valley Authority)

After excluding the previous set of action agencies and consultations noted above from the total universe of impacts identified in the body of the economic analysis, there are no remaining action agencies or consultations that may produce significant impacts on small entities. Thus, the economic analysis indicated that small businesses participating in consultations involving the above-listed activities and corresponding action agencies will not be significantly affected as a result of section 7 implementation.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have concluded that it would not affect a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for *Arabis perstellata* will not have a significant economic impact on a substantial number of small entities, and a final regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 *et seq.*), this designation of critical habitat for *Arabis perstellata* is not considered to be a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in our analysis, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, 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, nor will the rule have a significant economic impact on a substantial number of small entities. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The purpose of this requirement is to ensure that all Federal agencies "appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy. The OMB has provided guidance for implementing this executive order that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. One of these criteria is relevant to this analysis—increases in the cost of energy distribution in excess of one percent. Based on our economic analysis of this designation of critical habitat for *Arabis perstellata*, Tennessee Valley Authority (TVA) consultations on transmission line construction and maintenance resulting from *Arabis perstellata* being listed and critical habitat being designated are expected to have project modification costs of $4,000 to $15,000, and administrative costs of $5,000 to $36,000. Thus, the total costs incurred by TVA as a result of section 7 implementation range from $9,000 to $51,000. Total operation expenses for TVA in 2002 were $5.2 billion. The total costs incurred as a result of section 7 are less than one thousandth of one percent of TVA's operating expenses, so the impact to energy distribution is not anticipated to exceed the one percent threshold. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501),

the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. This determination is based on the economic analysis conducted for this designation of critical habitat for *Arabis perstellata*. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating approximately 648 ha (1600 ac) of lands in Franklin, Owen, and Henry counties, Kentucky, and Rutherford and Wilson counties, Tennessee, as critical habitat for *Arabis perstellata* in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat for *Arabis perstellata* does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, the Service requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Kentucky and Tennessee, as well as during the listing process. The impact of the designation on State and local governments and their activities was fully considered in the Economic Analysis. As discussed above, the designation of critical habitat in areas currently occupied by *Arabis perstellata* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act, as amended. This rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs that are essential for the conservation of *Arabis perstellata*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. 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.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are not aware of any Tribal lands essential for the conservation of *Arabis perstellata*. Therefore, the critical habitat for *Arabis perstellata* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this rule is available upon request from the Cookeville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Timothy Merritt (*see* **ADDRESSES** section), 931/528–6481, extension 211.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ For the reasons outlined in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. In section 17.12(h), revise the entry for "*Arabis perstellata*" under "FLOWERING PLANTS" in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Arabis perstellata	Braun's Rock-cress	U.S.A. (KY, TN)	Brassicaceae	E	570	17.96(a)	NA
*	*	*	*	*	*	*	*

■ 3. In 17.96, amend paragraph (a) by adding an entry for *Arabis perstellata* in alphabetical order under Family Brassicaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Brassicaceae: *Arabis perstellata* (Braun's rock-cress).

(1) Critical habitat units are depicted for Franklin, Henry, and Owen counties, Kentucky, and Rutherford and Wilson counties, Tennessee, on the maps below.

(2) Based on the best available information, primary constituent elements essential for the conservation of *Arabis perstellata* are:

(i) Relatively undisturbed, closed canopy mesophytic and sub-xeric forest with large, mature trees (such as sugar maple (*Acer saccharum*), chinquapin oak (*Quercus muhlenbergii*), hackberry (*Celtus occidentalis*), or Ohio buckeye (*Aesculus glabra*)), and

(ii) Open forest floors with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination, and

(iii) Areas with few introduced weed species such as *Alliaria petiolata* or *Lonicera maackii*, and

(iv) Rock outcrops on moderate to steep calcareous slopes defined by:

(A) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky and the Lebanon, Carters, Leipers, and Catheys, and Bigby-Cannon Limestones in Tennessee; and

(B) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

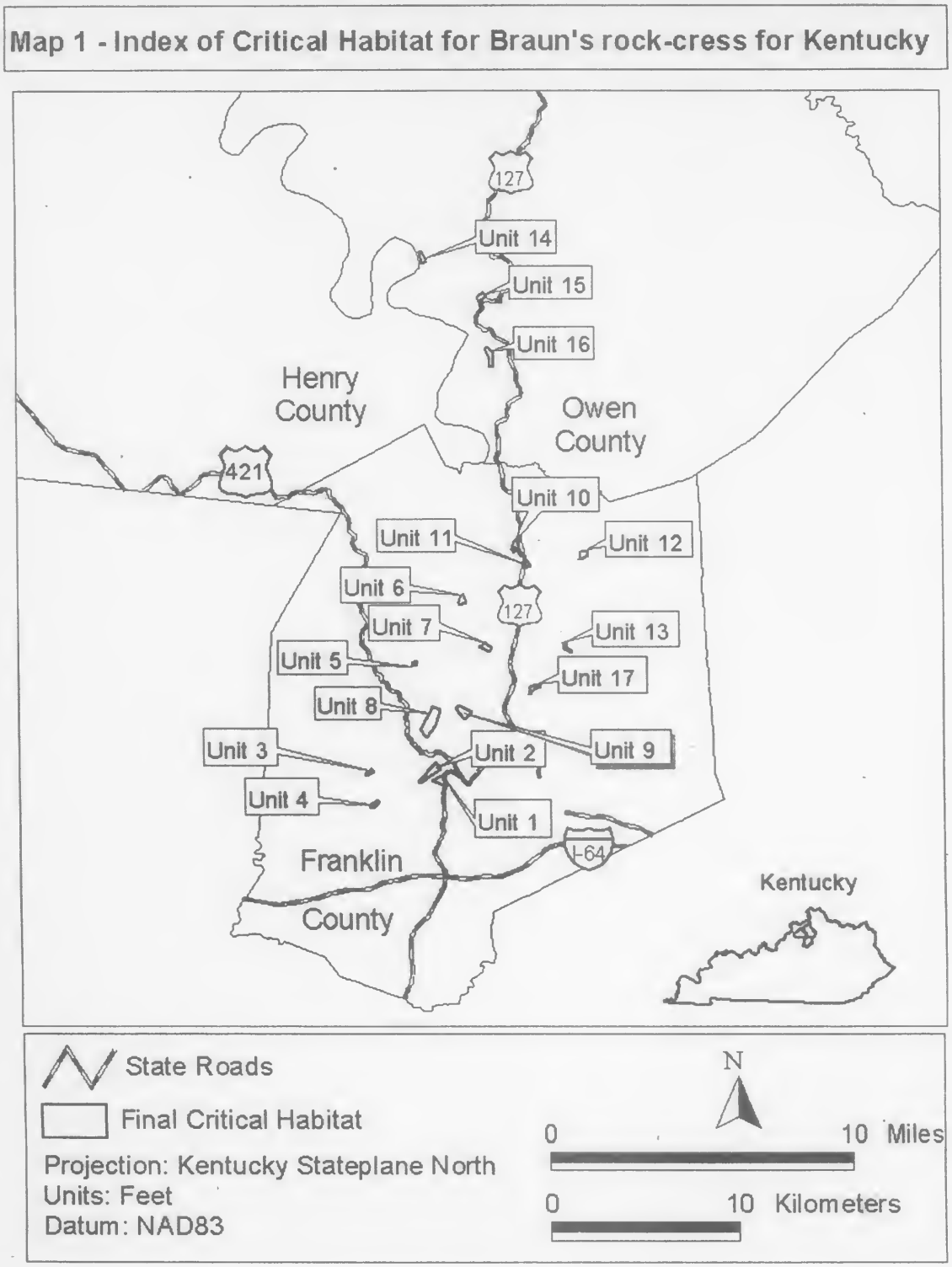
(3) Existing features and structures made by people, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements and are not critical habitat. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical Habitat Map Units for Kentucky.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles and critical habitat units were then mapped in feet using Kentucky State Plane North, NAD 83, and Tennessee State Plane, NAD 83, coordinates.

(ii) Map 1—Index map of Critical Habitat for Braun's Rock-cress, Kentucky, follows:

BILLING CODE 4310–55–P



(5) Unit 1: Sky View Drive, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet)

coordinates: 1453158.08, 257013.95; 1455318.02, 258193.89; 1455537.40, 256159.34.

(6) Unit 2: Benson Valley Woods, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort East, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1450864.02, 256869.46; 1453925.25, 260160.79; 1454705.56, 258980.31; 1451054.09, 256519.32.

(7) Unit 3: Red Bridge Road, Franklin County, Kentucky.

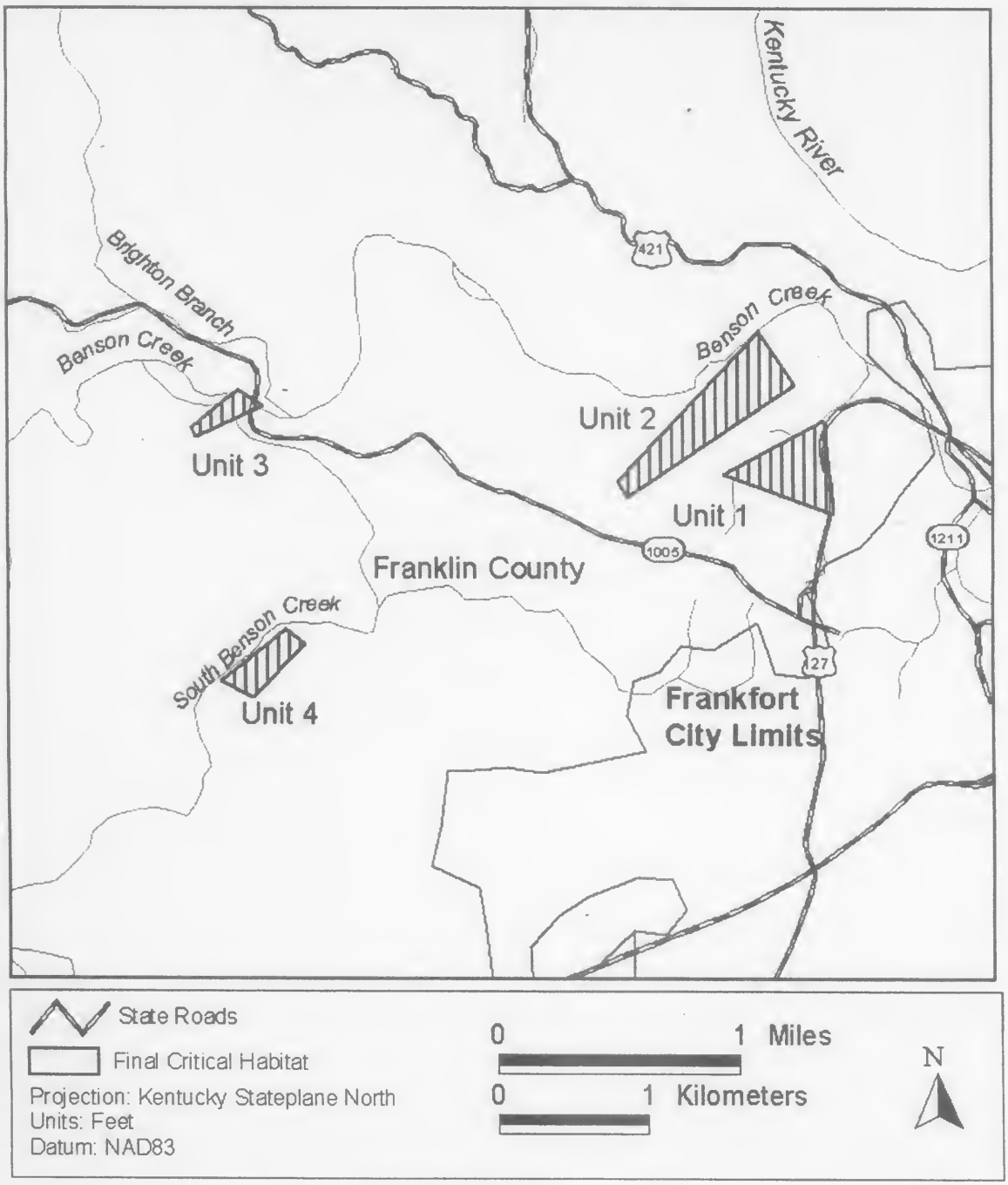
(i) From USGS 1:24,0000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1442614.00, 258863.10; 1443144.60, 258502.62; 1441670.26, 257801.90; 1441581.15, 258012.52.

(8) Unit 4: Tributary to South Benson Creek, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1443620.37, 253609.15; 1444037.01, 253294.00; 1442925.97, 252129.54; 1442210.20, 252471.40.

(ii) Map 2—Units 1, 2, 3, and 4, follows:

Map 2 - Units 1, 2, 3 and 4: critical habitat for Braun's rock-cress in Kentucky.



(9) Unit 5: Davis Branch, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Polsgrove, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1450167.05, 277739.69; 1450767.00, 277750.87; 1450761.41, 277314.88; 1450202.46, 277180.73.

(10) Unit 6: Onans Bend, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Polsgrove, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1458610.26, 289401.40; 1459066.14, 289401.50; 1459484.82, 288182.67; 1458210.30, 287759.68; 1458191.76, 288155.34.

(11) Unit 7: Shadrock Ferry Road, Franklin County, Kentucky.

(i) From USGS 1:24,0000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1461695.27, 280422.79; 1462823.09, 280986.70; 1463880.43, 280256.18; 1463463.90, 279506.43.

(12) Unit 8: Hoover Site, Franklin County, Kentucky.

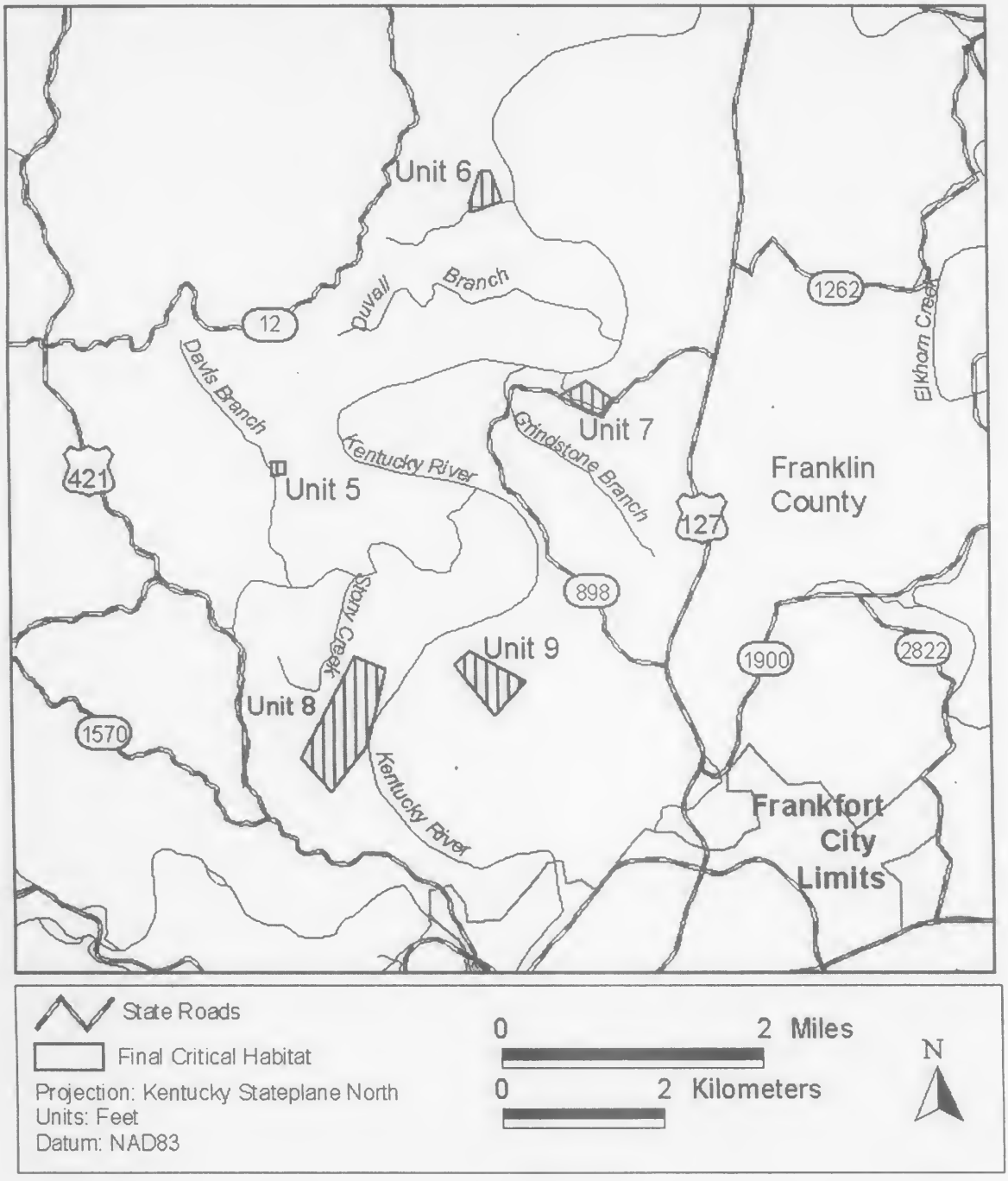
(i) From USGS 1:24,0000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1479208.72, 296984.32; 1480548.19, 297074.83; 1480548.19, 296260.28; 1479407.83, 295690.11; 1479177.04, 295694.63.

(13) Unit 9: Longs Ravine Site, Franklin County, Kentucky.

(i) From USGS 1:24,0000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1457404.81, 269596.23; 1457959.89, 270126.46; 1460205.09, 268958.30; 1459003.79, 267607.86.

(ii) Map 3—Units 5, 6, 7, 8, and 9, follows:

Map 3 - Units 5, 6, 7, 8 and 9: critical habitat for Braun's rock-cress in Kentucky.



(14) Unit 10: Strohmeiers Hills, Franklin County, Kentucky.

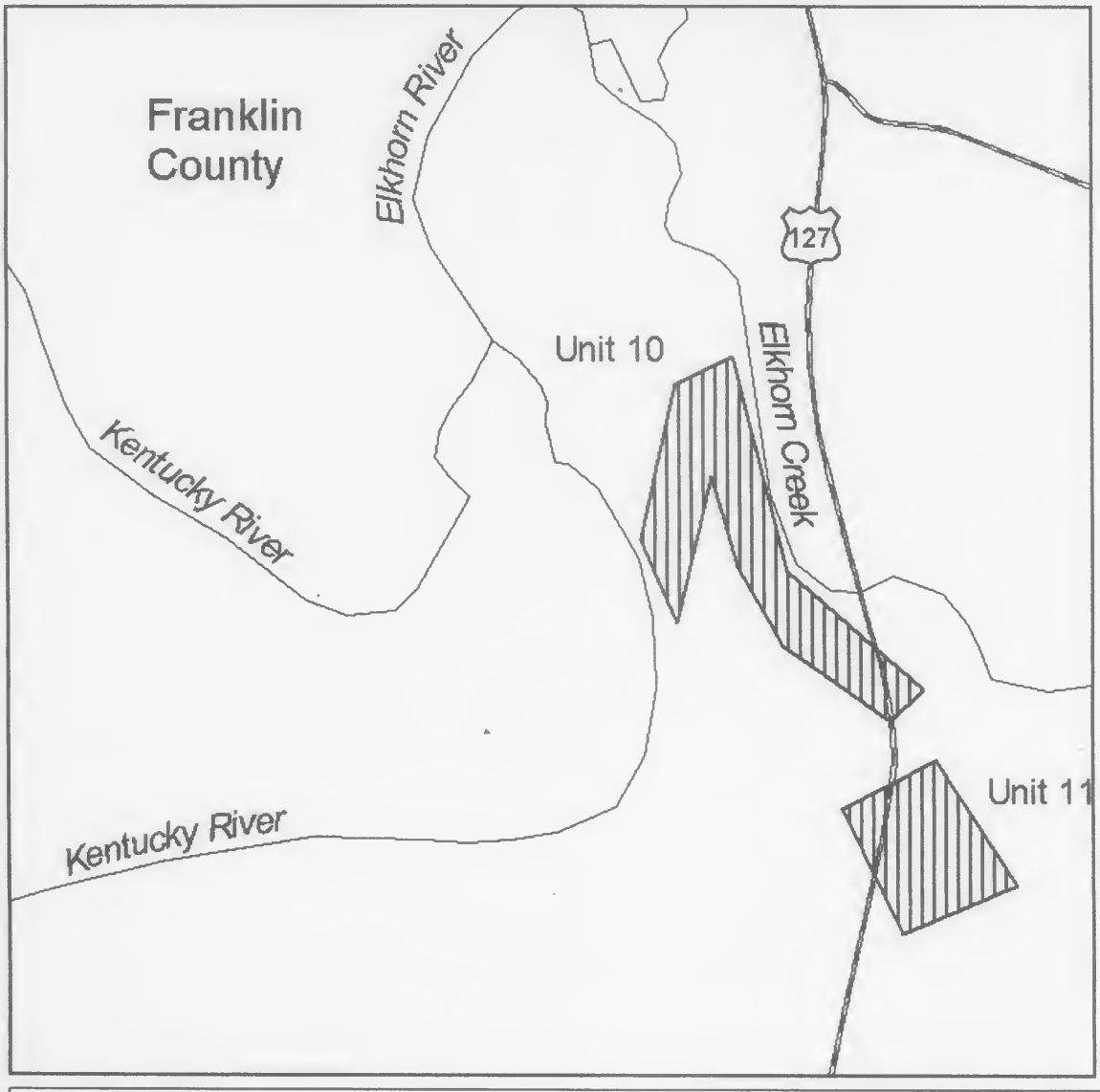
(i) From USGS 1:24,0000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1467733.92, 298729.06; 1468218.13, 298978.50; 1468695.00, 297144.38; 1469854.17, 296131.94; 1469568.53, 295848.76; 1468658.32, 296498.77; 1468247.47, 297181.06; 1468056.72, 297936.72; 1467763.26, 296704.19; 1467440.46, 297415.83.

(15) Unit 11: U.S. 127, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1469164.24, 295115.19; 1469939.07, 295511.62; 1470629.82, 294466.49; 1469662.78, 294058.06.

(ii) Map 4—Units 10 and 11, follows:

Map 4 - Units 10 and 11: critical habitat for Braun's rock-cress in Kentucky.



(16) Unit 12: Camp Pleasant Branch Woods, Franklin County, Kentucky.

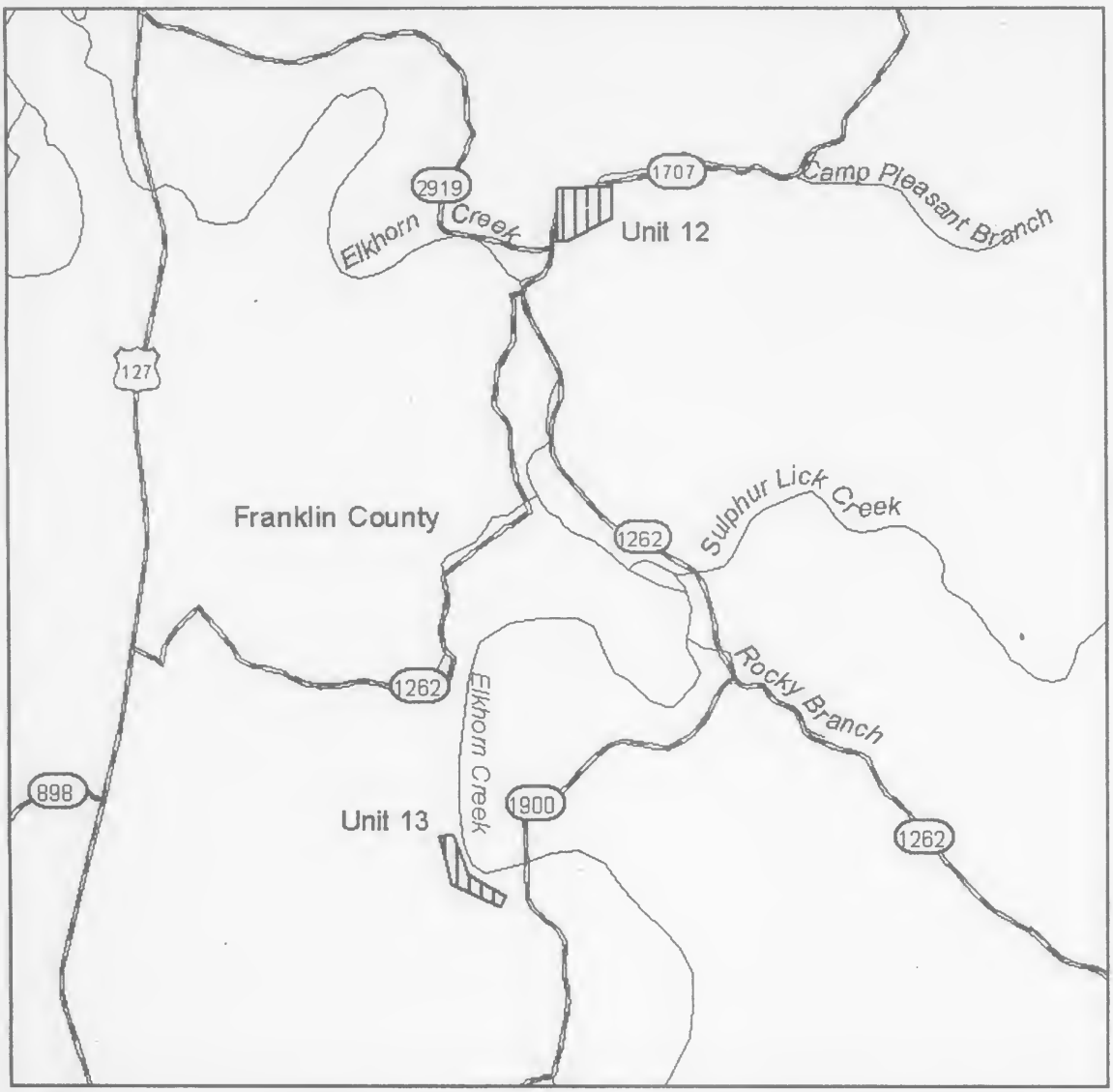
(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1453446.71, 269919.75; 1454641.35, 269410.27; 1453921.05, 266476.39; 1452392.62, 264561.46; 1451250.69, 265879.07.

(17) Unit 13: Saufley, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1476234.26, 281055.05; 1476538.92, 281115.98; 1476924.83, 280171.52; 1477848.97, 279612.98; 1476538.92, 279887.17.

(ii) Map 5—Units 12 and 13, follows:

Map 5 - Units 12 and 13: critical habitat for Braun's rock-cress in Kentucky.



(18) Unit 14: Clements Bluff, Owen County, Kentucky.

(i) From USGS 1:24,000 quadrangle Gratz, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1451615.01, 349295.36; 1452022.39, 349505.61; 1452910.30, 347908.24; 1452180.35, 347473.85.

(19) Unit 15: Monterey U.S. 127, Owen County, Kentucky.

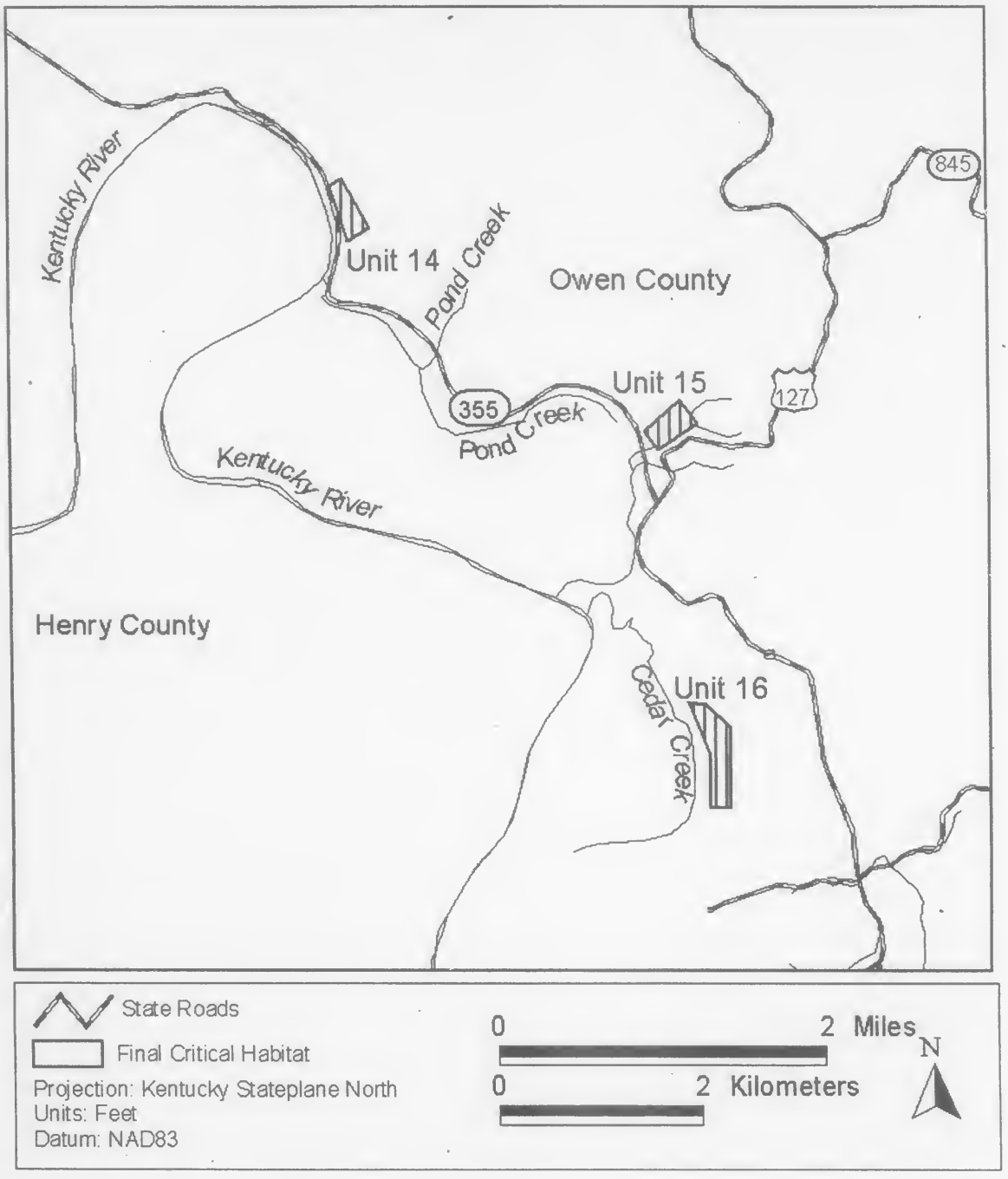
(i) From USGS 1:24,000 quadrangle Monterey, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1462791.17, 342357.03; 1463347.35, 341639.38; 1462109.41, 340778.21; 1461660.88, 341370.27.

(20) Unit 16: Craddock Bottom, Owen County, Kentucky.

(i) From USGS 1:24,000 quadrangles Frankfort East and West, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1463039.86, 332602.65; 1463575.00, 332555.43; 1464377.71, 331784.20; 1464377.71, 329218.68; 1463748.13, 329202.94; 1463716.65, 330918.53.

(ii) Map 6—Units 14, 15, and 16, follows:

Map 6 - Units 14, 15 and 16: critical habitat for Braun's rock-cress in Kentucky.

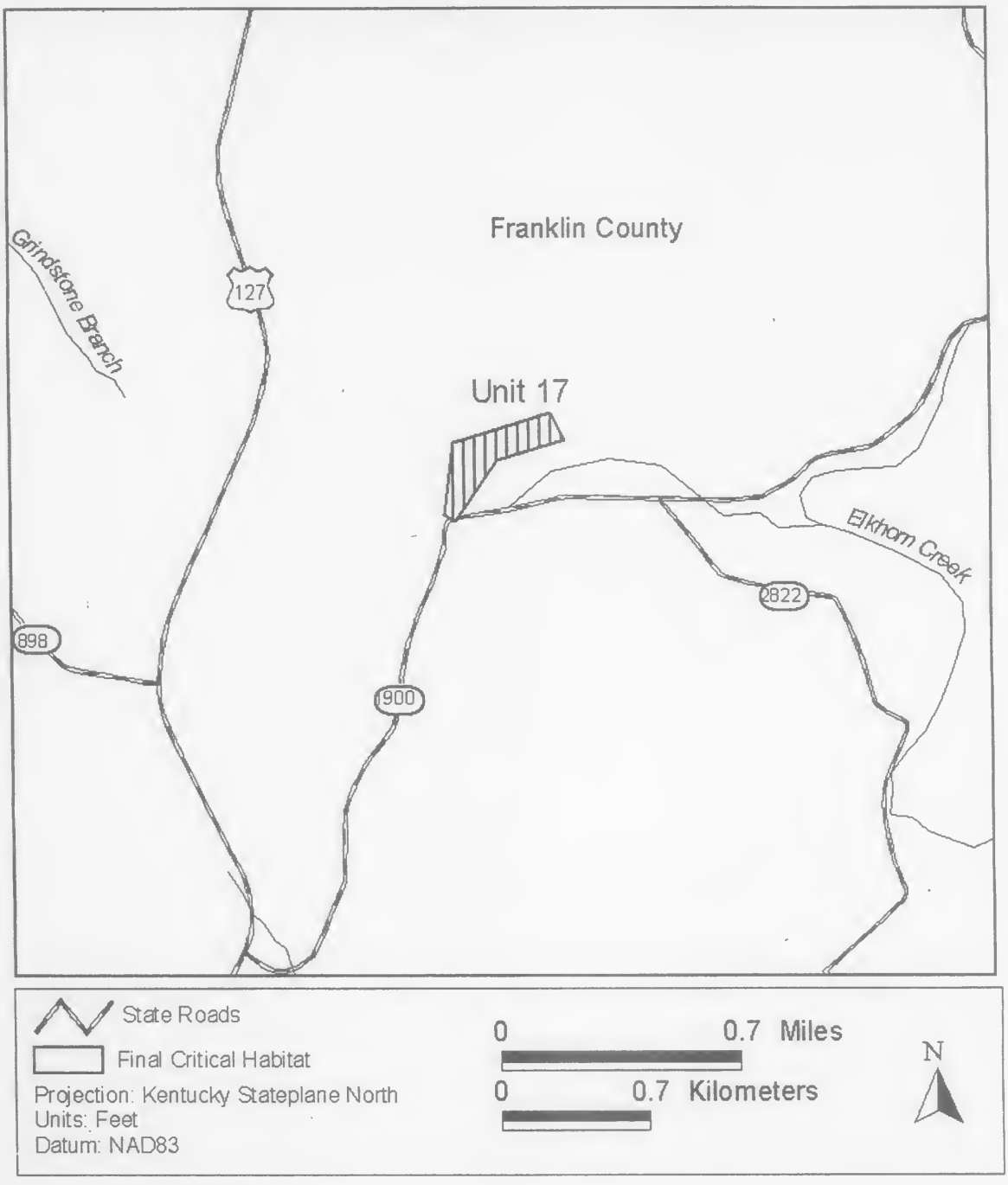


(21) Unit 17: Backbone North, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort East, Kentucky; land bounded by the following Kentucky State Plane North / NAD83 (Feet) coordinates: 1470487.13, 273240.06; 1471988.00, 273697.42; 1472199.59, 273279.29; 1471168.97, 272953.00; 1470516.94, 272031.81; 1470339.01, 272116.74.

(ii) Map 7—Unit 17, follows:

Map 7 - Unit 17: critical habitat for Braun's rock-cress in Kentucky.



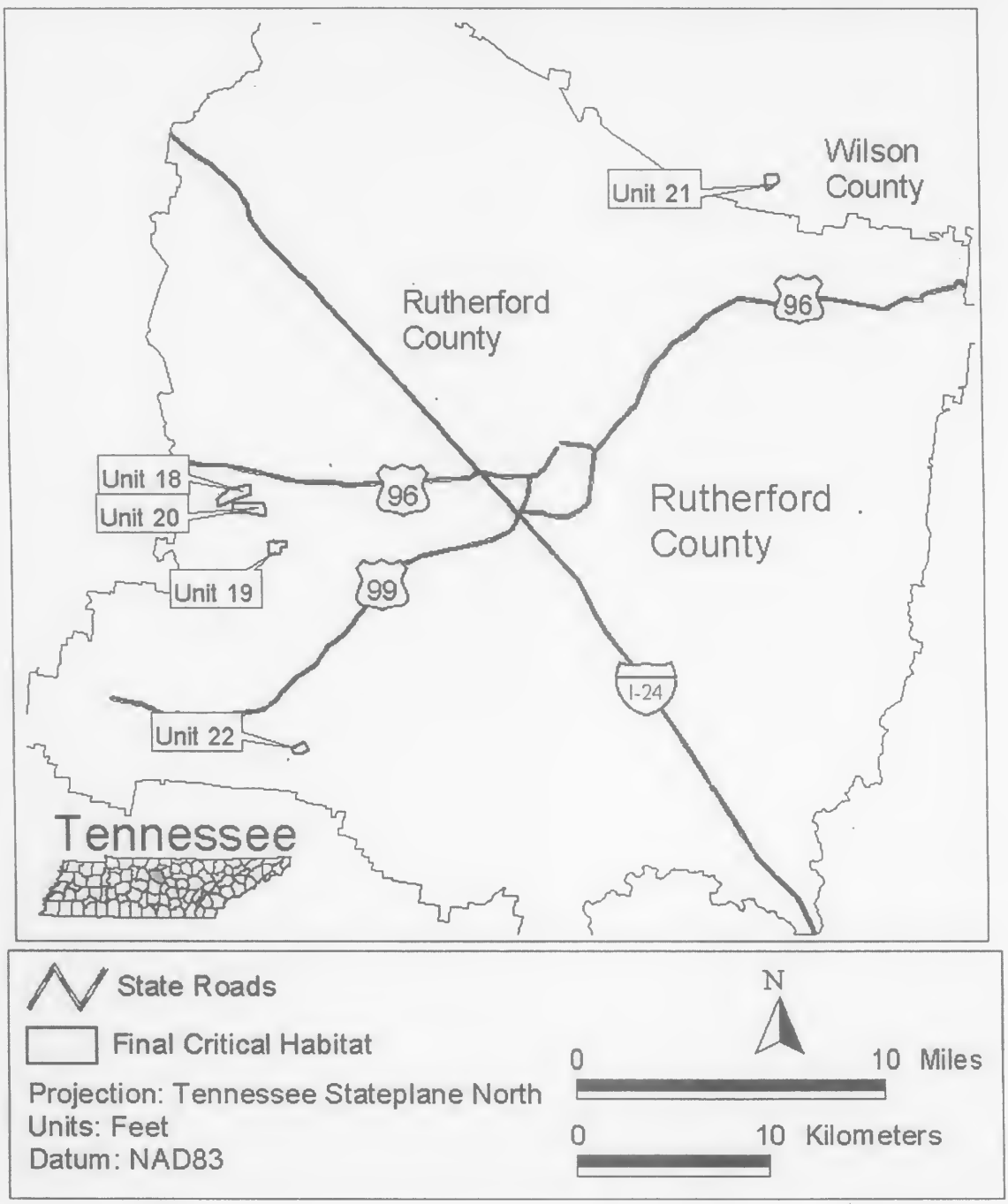
(21) Critical Habitat Map Units for Tennessee.

(i) Data layers defining map unit were created on a base of USGS 7.5′ quadrangles and proposed critical habitat units were then mapped in feet

using Tennessee State Plane, NAD 83, coordinates.

(ii) Map 8—Index of Critical Habitat for Braun's Rock-cress, Tennessee, follows:

Map 8 - Index of Critical Habitat for Braun's rock-cress for Tennessee



(22) Unit 18: Scales Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (Feet) coordinates (E,N):

1797871.97, 548892.57; 1800101.59, 549457.83; 1800070.19, 547856.27; 1797934.77, 547071.19.

(23) Unit 19: Sophie Hill, Rutherford County, Tennessee.

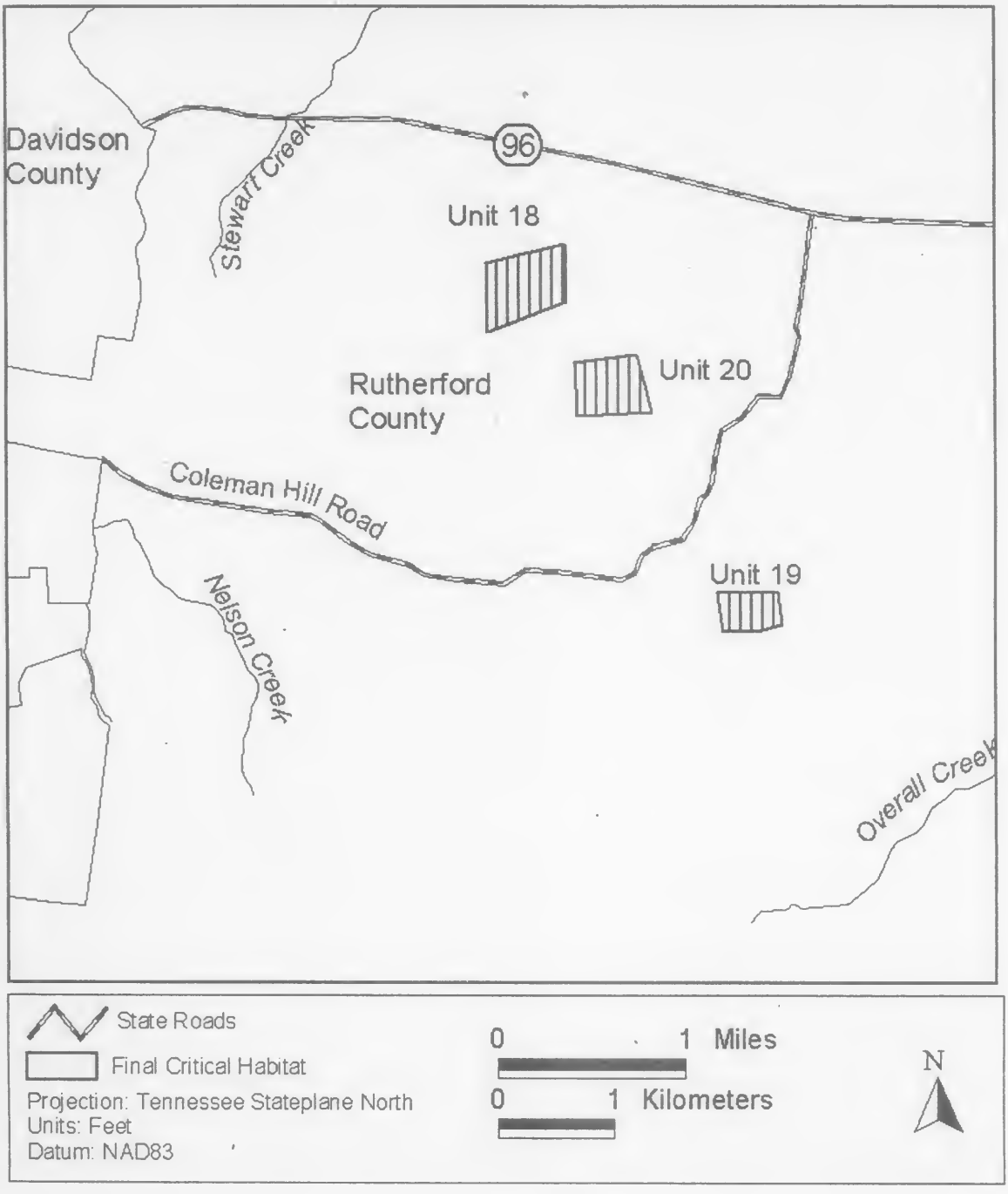
(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (Feet) coordinates (E,N): 1804270.37, 539691.44; 1805958.29, 539809.20; 1806076.05, 538867.10; 1804427.38, 538631.58.

(24) Unit 20: Indian Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (Feet) coordinates (E,N): 1800305.71, 546168.35; 1802111.40, 546443.12; 1802543.19, 544794.46; 1800423.48, 544676.69.

(ii) Map 9—Units 18, 19, and 20, follows:

Map 9 - Units 18, 19 and 20: critical habitat for Braun's rock-cress in Tennessee.



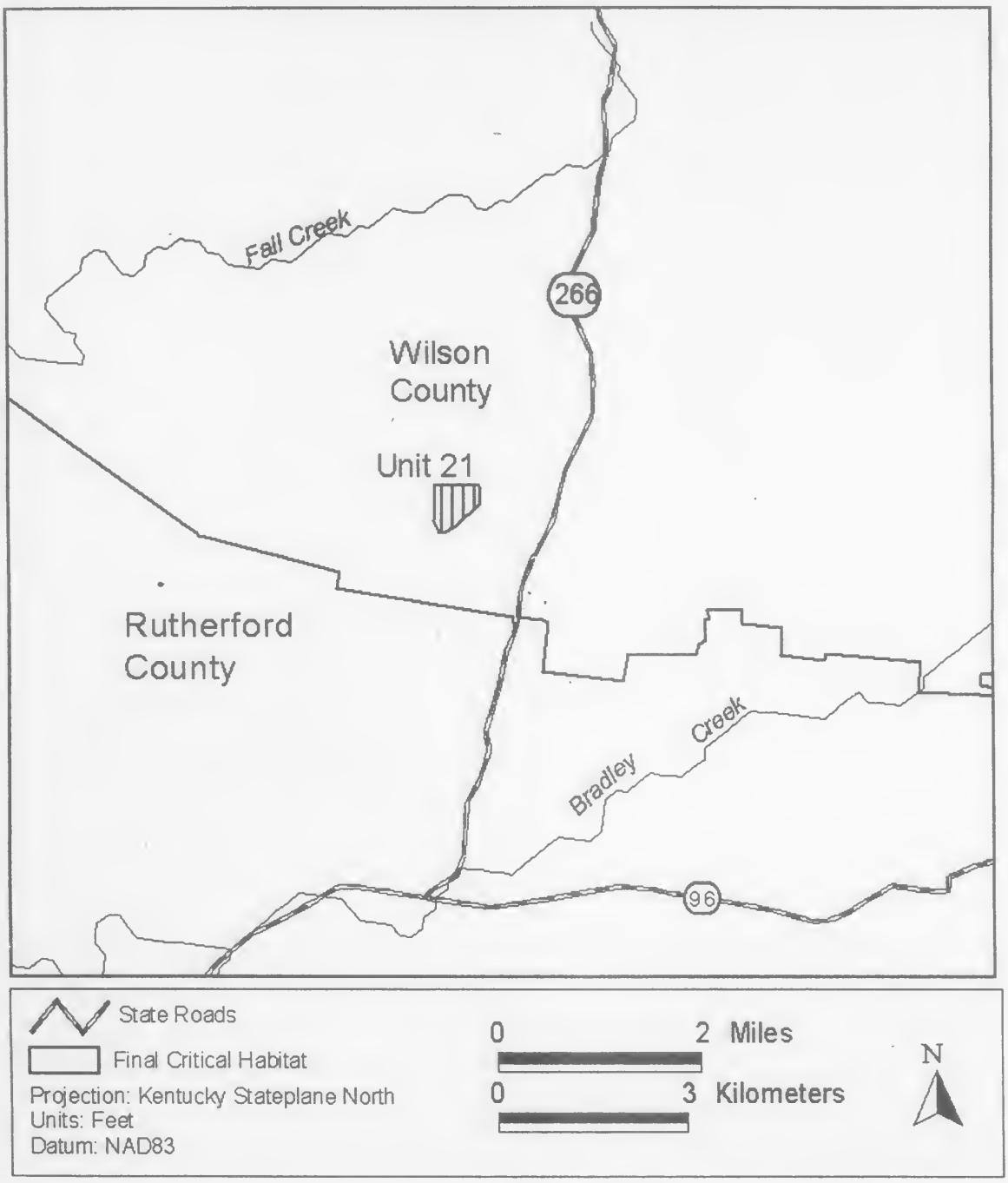
(25) Unit 21: Grandfather Knob, Wilson County, Tennessee.

(i) From USGS 1:24,000 quadrangle Lascassas, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (Feet) coordinates (E,N):

1888463.64, 602182.29; 1890759.35, 602182.29; 1890842.07, 601189.55; 1889518.42, 599969.31; 1888877.28, 599638.40; 188670.46, 599638.40; 1888401.59, 600300.23.

(ii) Map 10—Unit 21, follows:

Map 10 - Unit 21: critical habitat for Braun's rock-cress in Tennessee.



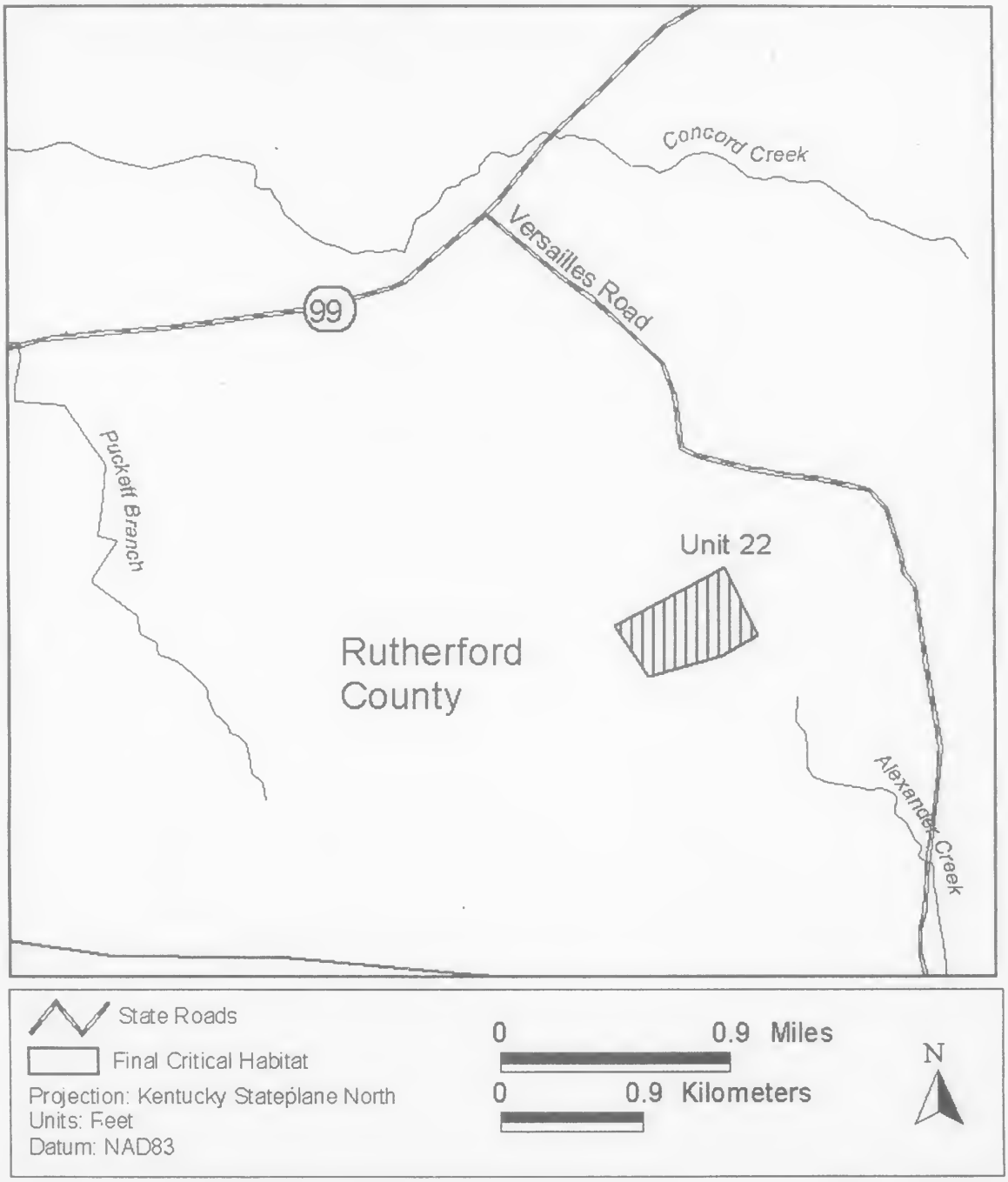
(26) Unit 22: Versailles Knob, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rover, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (Feet) coordinates (E,N):

1806361.65, 504515.38; 1808616.22, 505711.83; 1809308.27, 504327.51; 1808517.23, 503872.66; 1807034.03, 503477.14.

(ii) Map 11—Unit 22, follows:

Map 11 - Unit 22: critical habitat for Braun's rock-cress in Tennessee.



Dated: May 26, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–12435 Filed 6–2–04; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
June 3, 2004

Part III

Environmental Protection Agency

40 CFR Parts 52, 70, and 71
Rulemaking on Section 126 Petitions From New York and Connecticut Regarding Sources in Michigan; Revision of Definition of Applicable Requirement for Title V Operating Permit Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 70, and 71

[FRL–7669–6]

RIN 2060–AJ36

Rulemaking on Section 126 Petitions From New York and Connecticut Regarding Sources in Michigan; Revision of Definition of Applicable Requirement for Title V Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, EPA is revising one element of a final rule published on January 18, 2000, regarding petitions filed by four Northeastern States under section 126 of the Clean Air Act (CAA). The petitions seek to mitigate interstate transport of nitrogen oxides (NO_X), one of the main precursors of ground-level ozone pollution. The final rule partially approved the four petitions under the 1-hour ozone national ambient air quality standard, thereby requiring certain types of sources located in 12 States and the District of Columbia to reduce their NO_X emissions.

Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on a related EPA regulatory action, the NO_X State implementation plan call (NO_X SIP Call), that has relevance to the Section 126 Rule. Although the court decision did not directly address the State of Michigan, the reasoning of the court regarding the significance of NO_X emissions from sources in two other States called into question the inclusion of a portion of Michigan in the area covered by the NO_X SIP Call. In response, the EPA is removing that portion of Michigan, known as the "coarse grid" portion, from the NO_X SIP Call. The Section 126 Rule is based on many of the same analyses and information used for the NO_X SIP Call and covers part of Michigan. Thus, in light of EPA's response to the court ruling on the NO_X SIP Call, EPA is also withdrawing its section 126 findings and denying the petitions under the 1-hour ozone standard with respect to sources located in the coarse grid portion of Michigan. The EPA has not identified any existing section 126 sources located in the affected portion of the coarse grid.

The EPA is also revising the definition of the "applicable requirement" for title V operating permit programs by providing expressly that any standard or other requirement under section 126 is an applicable requirement and must be included in operating permits issued under title V of the CAA.

DATES: This final rule is effective July 6, 2004.

ADDRESSES: Documents relevant to this action are available for public inspection at the EPA Docket Center, Attention: Docket OAR–2001–2009, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number is (202) 566–1742. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, EPA Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail at *oldham.carla@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Get Copies of This Document and Other Related Information?

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2001–2009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Air Docket is (202) 566–1742. A reasonable fee may be charged for copying documents.

The EPA has issued a separate rule on NO_X transport entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," hereafter referred to as the NO_X SIP Call. The rulemaking docket for that rule (Docket ID No. OAR–2001–0008) contains information and analyses that EPA has relied upon in the section 126 rulemaking, and hence documents in that docket are part of the rulemaking record for this rule.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. In addition, the **Federal Register** rulemaking actions and certain associated documents are located at *http://www.epa.gov/ttn/naaqs/ozone/rto/126/index.html*.

Outline

I. Background

A. What Action Did EPA Take in the January 18, 2000 Section 126 Rule?

In a final rule published on January 18, 2000 (65 FR 2674) (January 2000 Rule), EPA took action on petitions filed by four Northeastern States under section 126 of the CAA. Each petition requested that EPA make a finding that certain stationary sources located in other specified States are emitting NO_X in amounts that significantly contribute to ozone nonattainment and maintenance problems in the petitioning State. The petitions targeted electric utilities, industrial boilers and turbines, and certain other stationary sources of NO_X. The four States that submitted petitions are Connecticut, Massachusetts, New York, and Pennsylvania.

In the January 2000 Rule, EPA found that sources in 12 upwind States and the District of Columbia were significantly contributing to ozone nonattainment problems in the petitioning States under the 1-hour ozone standard. The EPA promulgated the Federal NO_X Budget Trading Program as the control remedy. Only a portion of Michigan was affected by the rule.

To determine whether emissions from States named in the petitions were significantly contributing to 1-hour nonattainment problems in the petitioning States, EPA relied on the technical analyses from the final NO_X SIP Call rulemaking (63 FR 57356; October 27, 1998). The technical analyses used to support the Section 126 Rule are discussed in detail in previous section 126 rulemaking actions (63 FR 56292; October 21, 1998 and 64 FR 28250; May 25, 1999) and in the final NO_X SIP Call.

Section 126 of the CAA authorizes a downwind State to petition EPA for a finding that any new (or modified) or existing major stationary source or group of stationary sources upwind of the State emits or would emit in violation of the prohibition of section 110(a)(2)(D)(i) because their emissions contribute significantly to nonattainment, or interfere with maintenance, of a national ambient air quality standard in the State. Sections 110(a)(2)(D)(i), 126(b)–(c). If EPA makes the requested finding, the sources must shut down within 3 months from the finding unless EPA directly regulates the sources by establishing emissions limitations and a compliance schedule, extending no later than 3 years from the date of the finding, to eliminate the prohibited interstate transport of pollutants as expeditiously as possible. See sections 110(a)(2)(D)(i) and 126(c).

B. What Was the Geographic Scope of the 1-Hour Findings for Michigan Sources?

In the January 2000 Section 126 Rule, the 1-hour findings for sources in Michigan were linked to the petitions from Connecticut and New York. Both States defined the geographic scope of their petitions in terms of the Ozone Transport Assessment Group (OTAG) Subregions. The OTAG was a group of 37 States in the Eastern half of the United States that was active in the 1995–1997 timeframe. The OTAG assessed ozone transport affecting member States and submitted recommendations to EPA on control strategies to mitigate the ozone transport.[1] These Subregions were delineated by OTAG for use in some of the early air quality modeling analyses to determine the spatial scale of transport. The Subregional divisions were not used for the purpose of evaluating various control strategies. (See 62 FR 60318; November 7, 1997.) Both the New York and Connecticut petitions targeted sources located in OTAG Subregion 2, among other areas. Part of Michigan is included in Subregion 2 (see Figure 1 below).

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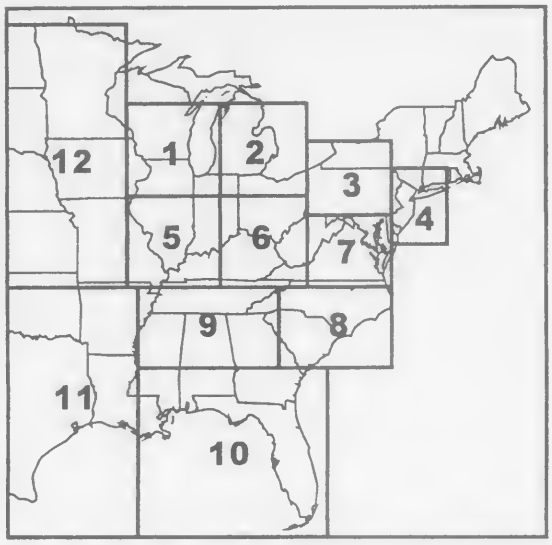
[1] The OTAG recommendations are provided in appendix B of the November 7, 1997 NO_X SIP Call propoosal (62 FR 60376).

Figure 1. Location of Ozone Transport Assessment Group (OTAG) Subregions



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As part of the January 2000 Rule, EPA made findings that large electric generating units (EGUs) and large industrial boilers and turbines (non-EGUs) located in the OTAG Subregion 2 portion of Michigan are significantly contributing to both Connecticut and New York under the 1-hour ozone standard. The Subregion 2 portion of Michigan covers the area south of 45 degrees latitude and east of 86 degrees longitude. The rest of Michigan was not covered by the section 126 findings because the New York and Connecticut petitions did not target any other areas.

C. What Was the March 3, 2000 Court Decision on the NO_X SIP Call?

1. What Is the Relevance of the NO_X SIP Call Court Decision to the Section 126 Rule?

On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit Court issued its decision on the NO_X SIP Call, largely upholding the rule. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir., 2000).

However, the Court ruled against EPA on several points, one of which is relevant to today's rulemaking. Specifically, the court vacated the inclusion of Georgia and Missouri in the NO_X SIP Call in light of the OTAG's conclusions that emissions from coarse grid portions of States did not merit controls. The court remanded this issue concerning Georgia and Missouri to EPA for further consideration. The Section 126 Rule is based on NO_X SIP Call analyses and also affects a coarse grid area, in this case, in Michigan. (See the following section for an explanation of coarse grid versus fine grid areas of States.) Therefore, EPA's response to the NO_X SIP Call court decision related to coarse grid sources is being taken into consideration in the Section 126 Rule.

2. What Is the NO_X SIP Call Court Decision Regarding Coarse Grid Sources?

In the NO_X SIP Call, Georgia and Missouri industry litigants challenged EPA's decision to calculate NO_X budgets for these two States based on NO_X emissions throughout the entirety of each State. The litigants maintained that the record supports including only eastern Missouri and northern Georgia as contributing to downwind ozone problems.

The challenge from these litigants generally stems from the recommendations of the OTAG. The OTAG recommended NO_X controls to reduce transport for areas within the "fine grid" of the air quality modeling domain, but recommended that areas within the "coarse grid" not be subject to additional controls, other than those required by the CAA.[2]

In its modeling, OTAG used grids drawn across most of the eastern half of the United States. The "fine grid" has grid cells of approximately 12 kilometers on each side (144 square kilometers). The "coarse grid" extends beyond the perimeter of the fine grid and has cells with 36 kilometer resolution. As shown in Figure F–10, appendix F of part 52.34, the fine grid includes the area encompassed by a box with the following geographic coordinates: Southwest Corner: 92 degrees West longitude, 32 degrees North latitude; Northeast Corner: 69.5 degrees West longitude, 44 degrees North latitude (OTAG Final Report, Chapter 2). The OTAG could not include the entire Eastern U.S. within the fine grid because of computer hardware constraints.

It is important to note that there were two key factors directly related to air quality that OTAG considered in determining the location of the fine grid-coarse grid line.[3] (See OTAG Technical Supporting Document, Chapter 2, page 6; *http://www.epa.gov/*

[2] The OTAG recommendations on Utility NO_X Controls approved by the Policy Group, June 3, 1997 (62 FR 60318, appendix B, November 7, 1997).

[3] In addition to these two factors, OTAG considered three other factors in establishing the geographic resolution, overall size, and the extent of the fine grid. These other factors dealt with the computer limitations and the resolution of available model inputs.

ttn/otag/finalrpt/.) Specifically, the fine grid-coarse grid line was drawn to: (1) Include within the fine grid as many of the 1-hour ozone nonattainment problem areas as possible and still stay within the computer and model run time constraints, (2) avoid dividing any individual major urban area between the fine grid and coarse grid, and (3) be located along an area of relatively low emissions density. As a result, the fine grid-coarse grid line did not track State boundaries. and Missouri and Georgia were among several States that were split between the fine and coarse grids. Eastern Missouri and northern Georgia were in the fine grid while western Missouri and southern Georgia were in the coarse grid.

The analysis OTAG conducted found that emissions controls examined by OTAG, when modeled in the entire coarse grid (*i.e.*, all States and portions of States in the OTAG region that are in the coarse grid) had little impact on high 1-hour ozone levels in the downwind ozone problem areas of the fine grid.[4]

The Court vacated EPA's determination of significant contribution for all of Georgia and Missouri. *Michigan* v. *EPA*, 213 F.3d at 685. The Court did not seem to call into question the proposition that the fine grid portion of each State should be considered to make a significant contribution downwind. However, the Court emphasized that "EPA must first establish that there is a measurable contribution," id., at 684, from the coarse grid portion of the State before determining that the coarse grid portion of the State significantly contributes to ozone nonattainment downwind.

3. What Is EPA's Response to the NO_X SIP Call Court Decision Regarding Coarse Grid Sources?

In a separate rulemaking on the NO_X SIP Call, known as the Phase 2 rulemaking, EPA is addressing several issues remanded by the court in its March 3, 2000 decision. (The Phase 2 rule was proposed on February 22, 2002 (67 FR 8396) and is being finalized in the same time frame as today's section 126 action). One of the Phase 2 issues is the geographic applicability of the NO_X SIP Call for States located partially in the coarse grid. With regard to Georgia and Missouri, EPA is retaining the existing determination that sources in the fine grid parts of these States contribute significantly to nonattainment downwind but is not including the coarse grid portions of States. The EPA explained that the reasoning of the court regarding control requirements for Georgia and Missouri also calls into question the inclusion of the coarse grid portions of Michigan and Alabama in the NO_X SIP Call. Therefore, EPA is extending this rationale to the States of Michigan and Alabama and EPA is revising the NO_X SIP Call to exclude the coarse grid portions of Michigan and Alabama.

II. Final Rule Regarding Michigan Sources

A. What Is Today's Rule Regarding Michigan Coarse Grid Sources Under the 1-Hour Standard?

In a February 22, 2002 action, EPA proposed to withdraw the section 126 findings made in response to the petitions from Connecticut and New York under the 1-hour standard for sources that are or will be located in the coarse grid portion of Michigan (67 FR 8386). The EPA proposed this action to be consistent with EPA's action regarding coarse grid sources under the NO_X SIP Call. As discussed above, the Section 126 Rule is based on many of the same analyses and information from the NO_X SIP Call. In today's action, EPA is finalizing the rulemaking as proposed. Under today's rule, any existing or new sources located in that affected segment of the coarse grid (north of 44 degrees latitude, south of 45.0 degrees latitude, and east of 86.0 degrees latitude) are no longer subject to the control requirements of the Section 126 Rule.[5] The EPA has not identified any existing section 126 sources located in that area. There are no coarse grid areas in other States covered by the Section 126 Rule under the 1-hour standard. The EPA will address the coarse grid sources under the 8-hour standard in a separate rulemaking.

The EPA received only one short comment via e-mail on the proposal. The commenter asserted that many utilities want a "level playing field" with regard to emissions standards and that as a result of the proposed action, utilities could be planned for one area with a different set of rules. He stated that the proposal would also be a deterrent to developing new emissions technologies if new plants could be built without having emissions controls installed. The commenter also suggested that many power plants could be built in a 70 by 120 mile area. He was concerned that an emissions plume from the affected area could affect Ontario and States in the northeast.

The commenter appears not to be aware that the Section 126 Rule under the 1-hour standard never covered the whole State of Michigan because the relevant section 126 petitions only targeted sources in a specific portion of the State. Under section 126, EPA must limit its action to addressing the sources within the geographical boundaries specified in the petitions. Today's rule shifts the boundary between the area that is affected by the Section 126 Rule and the area that is not affected. Only a small portion of the State is at issue and, as mentioned above, EPA is not aware of any existing section 126 sources in that area. The commenter did not provide any evidence that new large EGU's are planned for the area or on what effect emissions from such sources might have on downwind States.

The EPA disagrees with the commenter that today's action would be a deterrent to the development of new emissions control technologies. Only a very small portion of the Section 126 Rule is affected by today's action. The control remedy for the Section 126 Rule is a NO_X budget trading program. Trading programs are one of the most cost-effective means to reduce emissions. They provide the flexibility and incentive for technology development. The EPA notes that although the Section 126 Rule does not cover the whole State, Michigan has adopted a statewide trading NO_X rule. Any new sources locating in the affected area, that as a result of today's rule would no longer be subject to the Section 126 Rule, would be subject to Michigan's statewide NO_X rule. In addition, there are a number of other emissions control requirements that sources locating in the affected portion of Michigan would have to meet, such as new source performance standards, new source review technology standards, and title V acid rain

[4] The OTAG recommendation on Major Modeling/Air Quality Conclusions approved by the Policy Group, June 3, 1997 (62 FR 60318, appendix B, November 7, 1997)

[5] The EPA is taking a different approach to interpreting the fine-coarse grid split for purposes of the Phase 2 NO_X SIP Call rule. The $_X$ SIP Call establishes State emissions budget rather than regulating individual sources. Because of the uncertainties with accurately dividing emissions between the fine and coarse grid portions of individual counties, EPA is basing the Phase 2 NO_X SIP Call emissions budgets on all counties that are wholly contained within the fine grid. That is, counties that are in the coarse grid or that straddle the fine-coarse grid line are excluded. Because the section 126 action regulates specific stationary sources, the issue of how to apportion a full NO_X inventory on a partial-county basis does not arise. Therefore, today's section 126 action to remove the coarse grid of Michigan follows the fine-coarse grid line exactly. Sources located in the fine grid portion of a county that straddles the fine-coarse grid line are covered by the Section 126 Rule. the EPA notes that the Section 126 Rule has already covered partial counties for Michigan in its January 2000 Rule. In that rule, only sources east of 86 degrees longitude and south of 45 degrees latitude were affected.

requirements. Thus, today's action does not result in sources being built without emissions control requirements.

As discussed above, in the *Michigan* v. *EPA* decision on the NO_X SIP Call, the court indicated that "EPA must first establish that there is a measurable contribution" from the coarse grid portion of the State before holding the coarse grid portion of the State partly responsible for the significant contribution of downwind ozone nonattainment in another State. *Michigan* v. *EPA*, 213 F.3d at 684. Elsewhere, the Court seemed to identify the standard as "material contribution []". *Id.* In response to the court opinion, EPA is revising the NO_X SIP Call to include only the fine grid portion, and not the coarse grid portion, of Michigan at this time. The EPA is applying the same reasoning to the Section 126 Rule because the Section 126 Rule relies on the technical record for the NO_X SIP Call. Therefore, EPA is finalizing the February 22, 2002 action as proposed: EPA is revising the Section 126 Rule and denying the New York and Connecticut petitions under the 1-hour standard with respect to sources that are or will be located in the coarse grid portion of Michigan.

B. Does Today's Rule Affect the Section 126 Requirements for Michigan Fine Grid Sources or Sources Located in Other States?

Today's rule does not affect the NO_X allowance allocations for Michigan sources located in the fine grid that were established in the January 2000 Rule. In addition, today's rule does not affect the section 126 trading budget for Michigan or the compliance supplement pool. Because EPA has not identified any existing large EGUs and large non-EGUs in the coarse grid portion of Michigan affected by today's rule, the NO_X allowance calculations in the January 2000 Rule were already based only on fine grid emissions. This rule does not affect any of the Section 126 Rule requirements for sources located in other States. Therefore, today's rule does not affect the ability of any sources located in the fine grid to comply with the section 126 requirements by the compliance deadline.

III. What Is Today's Revision to the Definition of "Applicable Requirement" for Title V Operating Permit Programs?

In the February 22, 2002 action, EPA proposed to revise the definitions of the "applicable requirement" in 40 CFR 70.2 and 71.2 by providing expressly that any standard or other requirement under section 126 of the CAA is an applicable requirement and must be included in operating permits issued under title V of the CAA. The EPA did not receive any public comments on that proposal. Therefore, EPA is finalizing the definitions as proposed.

Section 504(a) of the CAA explicitly requires that each permit include "enforceable emission limitations and standards, a schedule of compliance, * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan." 42 U.S.C. 7661c(a). Previously, the § 70.2 and § 71.2 definitions of "applicable requirement" did not include requirements that are imposed under section 126, even though section 126 authorizes the Administrator to adopt standards and requirements under certain circumstances as discussed above. Today's action remedies this omission and clarifies the treatment, in title V operating permits, of section 126 requirements promulgated by the Administrator. Therefore, the requirements of the Section 126 NO_X Budget Trading Program promulgated on January 18, 2000 must be included in the title V operating permits for units subject to the program.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under Executive Order 12866, today's action is not a "significant regulatory action" and is therefore not subject to review by OMB. In the January 2000 Rule titled "Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport," (65 FR 2674), EPA partially approved four section 126 petitions under the 1-hour ozone standard. Today's action withdraws the section 126 findings and denies the petitions under the 1-hour ozone standard with respect to sources located in a small portion of Michigan.

This action does not create any additional impacts beyond what was promulgated in the January 2000 Rule. This rule also does not raise novel legal or policy issues. Therefore, EPA believes that this action is not a "significant regulatory action."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's rule does not create new requirements. Instead, this action withdraws the section 126 requirements for sources that are or would be located in a specified portion of Michigan.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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 impacts of the proposed rule on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for the NAIAS codes listed in the following table;

NAIAS code	Economic activity or industry	Size standard in number of employees, millions of dollars of revenues, or output
322121, 322122	Pulp mills	750
325211	Plastics materials, synthetic resins, and nonvulcanized elastomers	750
325188, 325199	Industrial organic chemicals	1,000
324110	Petroleum refining	1,500
331111	Steel works, blast furnaces, and rolling mills	1,000
333611	Steam, gas, and hydraulic turbines	1,000
333618	Stationary internal combustion engines	1,000
333415	Air-conditioning and warm-air heating equipment and commercial and industrial refrigeration equipment.	750
222111, 222112	Electric utilities	4 million megawatt hrs.
486210	Natural gas transmission	$6.0
221330	Steam and air conditioning supply	$10.5

(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.

Today's rule does not create new requirements for small entities or other sources. Instead, this action withdraws the section 126 requirements for sources that are or would be located in a specified portion of Michigan. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rules with "Federal mandates" that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. A "Federal mandate" is defined to include a "Federal intergovernmental mandate" and a "Federal private sector mandate" (2 U.S.C. 658(6)). A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is "a condition of Federal assistance" (2 U.S.C. 658(5)(A)(I)). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more for either State, local, or Tribal governments in the aggregate, or for the private sector. This Federal action does not establish any new requirements, as discussed above. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Today's 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. Today's action imposes no additional burdens beyond those imposed by the January 2000 Rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on

the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have Tribal implications. 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. Today's action does not significantly or uniquely affect the communities of Indian Tribal governments. As discussed above, today's action imposes no new requirements that would impose compliance burdens beyond those that would already apply under the January 2000 Rule. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

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

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because this action is not "economically significant" as defined under Executive Order 12866 and the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Today's action does not establish any new regulatory requirements.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA," Public Law 104–113, section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply because today's action does not establish any new technical standards. This action amends the January 2000 Rule by reducing the portion of Michigan that is covered by the rule.

J. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action does not impose any additional costs and compliance burdens under the Section 126 Rule. Instead, this action withdraws the section 126 requirements for sources that are or would be located in a specified portion of Michigan. This rule will be effective July 6, 2004.

K. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

For the reasons discussed in the May 25, 1999 final rule (64 FR 28250), the Administrator determined that final action regarding the section 126 petitions is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the section 126 rulemaking must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 27, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

■ 2. Section 52.34 is amended by revising paragraphs (c)(2)(vi) and (g)(2)(vi) to read as follows:

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

* * * * *

(c) * * *

(2) * * *

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F–2, of this part.

* * * * *

(g) * * *

(2) * * *

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F–6, of this part.

* * * * *

Appendix F—[Amended]

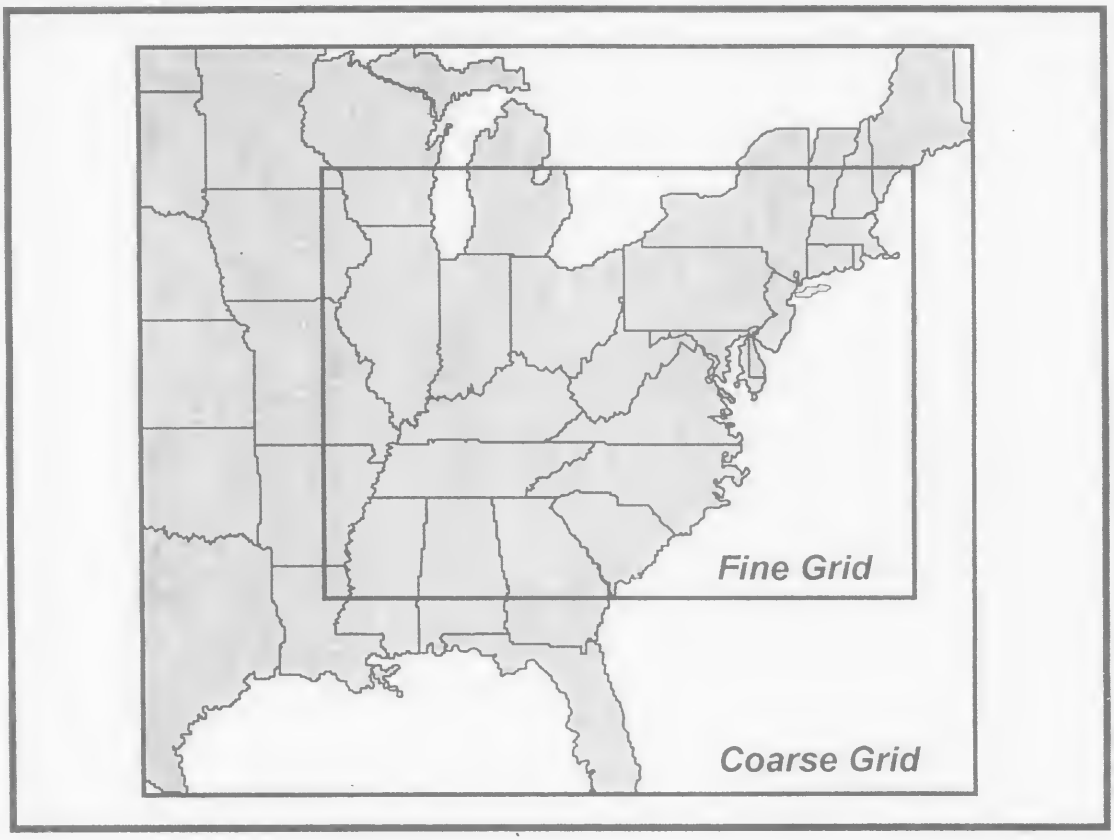
■ 3. Appendix F is amended by adding a new figure F–10 in numerical order to read as follows:

APPENDIX F TO PART 52—CLEAN AIR ACT SECTION 126 PETITIONS FROM EIGHT NORTHEASTERN STATES: NAMED SOURCE CATEGORIES AND GEOGRAPHIC COVERAGE

* * * * *

BILLING CODE 6560–50–P

Figure F-10. Ozone Transport Assessment Group Modeling Domain



PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Section 70.2 is amended by renumbering paragraphs (7) through (12) of the definition of "applicable requirement" as paragraphs (8) through (13) and adding a new paragraph (7) to read as follows:

§ 70.2 Definitions.

* * * * *

Applicable requirement * * *

(7) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

* * * * *

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

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

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

■ 2. Section 71.2 is amended by renumbering paragraphs (7) through (12) of the definition of "applicable requirement" as paragraphs (8) through (13) and adding a new paragraph (7) to read as follows:

§ 71.2 Definitions.

* * * * *

Applicable requirement * * *

(7) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

* * * * *

[FR Doc. 04–12553 Filed 6–2–04; 8:45 am]

BILLING CODE 6560–50–C

Federal Register

Thursday,
June 3, 2004

Part IV

The President

Executive Order 13342—Responsibilities of the Departments of Commerce and Veterans Affairs and the Small Business Administration With Respect to Faith-Based and Community Initiatives

Federal Register
Vol. 69, No. 107
Thursday, June 3, 2004

Presidential Documents

Title 3—

The President

Executive Order 13342 of June 1, 2004

Responsibilities of the Departments of Commerce and Veterans Affairs and the Small Business Administration With Respect to Faith-Based and Community Initiatives

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America's social and community needs, it is hereby ordered as follows:

Section 1. *Establishment of Centers for Faith-Based and Community Initiatives at the Departments of Commerce and Veterans Affairs and the Small Business Administration.*

(a) The Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.

Sec. 2. *Purpose of Executive Branch Centers for Faith-Based and Community Initiatives.* The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

Sec. 3. *Responsibilities of the Centers for Faith-Based and Community Initiatives.* Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

Sec. 4. *Reporting Requirements.* (a) *Report.* Not later than 180 days from the date of this order and annually thereafter, each of the three Centers described in section 1 of this order shall prepare and submit a report to the President through the White House OFBCI.

(b) *Contents.* The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) *Performance Indicators.* The first report, filed pursuant to section 4(a) of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency's performance against the objectives set forth in the initial report.

Sec. 5. *Responsibilities of the Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration.* The Secretaries and the Administrator shall:

(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

Sec. 6. *Administration and Judicial Review.* (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

THE WHITE HOUSE,
June 1, 2004.

[FR Doc. 04–12745
Filed 6–2–04; 9:10 am]
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H.R. 708/P.L. 108–230
To require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes. (May 28, 2004; 118 Stat. 646)

H.R. 856/P.L. 108–231
To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water and Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes. (May 28, 2004; 118 Stat. 648)

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H.R. 3104/P.L. 108–234
To provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom. (May 28, 2004; 118 Stat. 655)

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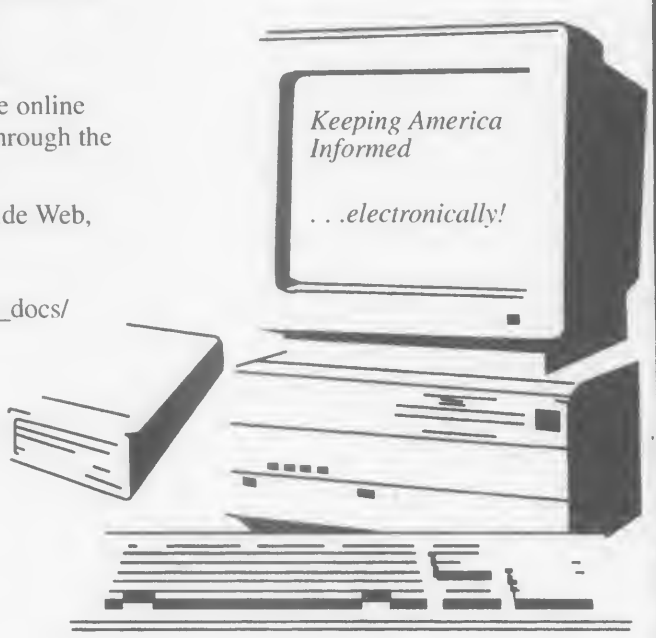

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