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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–102–2]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations by adding 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia to the list of quarantined areas. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

DATES: *Effective Date:* The interim rule became effective on January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ. APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on January 5, 2004 (69 FR 243–245, Docket No. 03–102–1), we amended the pine shoot beetle (PSB) regulations contained in 7 CFR 301.50 through 301.50–10 by adding 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia to the list of quarantined areas in § 301.50–3. That action was necessary to prevent the spread of PSB into noninfested areas of the United States.

Comments on the interim rule were required to be received on or before March 5, 2004. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

Regulatory Flexibility Act

This action affirms an interim rule that amended the PSB regulations by adding 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia to the list of quarantined areas. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of PSB to noninfested areas of the United States.

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

The interim rule affects entities engaged in the interstate movement of regulated articles from and through the 37 counties in Illinois, Indiana, Maryland, New York, Ohio, Pennsylvania, Vermont, and Virginia that were added to the list of quarantined areas by the interim rule. Affected entities may include nursery stock growers, Christmas tree farms, logging operations, and others who sell, process, or move regulated articles. As a result of the interim rule, entities moving regulated articles interstate from one of those 37 counties must first inspect and/or treat the regulated articles in order to obtain a certificate or limited permit authorizing the movement.

We have determined that there are 1,062 nurseries and 394 Christmas tree farms that sell, process, or move regulated articles in the 37 counties added to the list of quarantined areas by the interim rule; the number of logging operations affected by the interim rule is not known. Table 1 lists the number of affected nurseries and Christmas tree farms by State and county.

TABLE 1.—AFFECTED NURSERIES AND CHRISTMAS TREE FARMS BY STATE AND COUNTY

	Nurseries	Christmas tree farms		Nurseries	Christmas tree farms
Illinois:			New York (continued):.		
Carroll	10	6	Hamilton	9	4
Clark	6	5	Herkimer	32	9
Coles	19	13	Montgomery	28	7
Ford	4	0	Saratoga	84	18
Henry	20	13	Schenectady	27	4
Mason	12	0	Schoharie	33	7
Moultrie	9	4	Sullivan	35	16
Peoria	25	13	*Ohio:*	85	33
Shelby	19	10	Athens	31	10
Indiana:			Gallia	14	5
Bartholomew	14	5	Pike	12	9
Franklin	15	3	Washington	28	9
Monroe	20	6	*Pennsylvania:*.		
Morgan	12	8	Centre	63	20
Putnam	8	5	Fulton	20	12
Union	0	0	Lycoming	77	44
Maryland:			Susquehanna	44	26
Montgomery	95	23	Wyoming	25	16
New York:			*Vermont:*.		
Albany	89	22	Washington	53	15
Fulton	26	12	*Virginia:*.		
Greene	30	7	Clarke	14	8

Illinois. There are 124 nurseries and 64 cut Christmas tree farms that operate in the 9 counties in Illinois that were added to the list of quarantined areas by the interim rule. According to local Christmas tree growers and State agricultural extension representatives, more than 50 percent of the cut Christmas tree farms in those counties are "cut-your-own-tree" farms that sell to customers in the regulated area. Most nurseries in Illinois affected by the interim rule specialize in the production of deciduous landscape products and do not focus their production on regulated articles.

Indiana. There are 69 nurseries and 27 cut Christmas tree farms that operate in the 6 counties in Indiana that were added to the list of quarantined areas by the interim rule. According to local Christmas tree growers, more than 50 percent of the cut pine trees and pine tree products that are sold by those growers remain in the regulated area. Most nurseries in Indiana affected by the interim rule specialize in the production of deciduous landscape products; production of pine trees and pine products are not their primary focus of production.

Maryland. There are 95 nurseries and 23 cut Christmas tree farms that operate in Montgomery County, Maryland, which was the county that State added to the list of quarantined areas by the interim rule. According to local Christmas tree growers, more than half of the pine trees and pine products produced in that county were sold to customers outside of the regulated area.

New York. There are 393 nurseries and 106 cut Christmas tree farms that operate in the 10 counties in New York that were added to the list of quarantined areas by the interim rule. Albany and Saratoga counties contained the highest number of nurseries and Christmas tree farms in that State. According to local Christmas tree growers, more than 50 percent of pine trees produced in the affected counties were sold in wholesale markets and purchased by customers outside the regulated area. Most nurseries in New York that were affected by the interim rule do not focus their production on pine trees and pine products.

Ohio. There are 85 nurseries and 33 cut Christmas tree farms that operate in the 4 counties in Ohio that were added to the list of quarantined areas by the interim rule. According to local Christmas tree growers, less than 10 percent of pine trees were sold in those counties were purchased by customers outside the regulated area.

Pennsylvania. There are 229 nurseries and 118 cut Christmas tree farms that operate in the 5 counties in Pennsylvania that were added to the list of quarantined areas by the interim rule. According to the 2001 Agricultural Statistics, $12.4 million worth of live Christmas trees were sold in Pennsylvania in 2000, making it the State with the second highest number of cut Christmas tree farms, and the third highest value of sales in the Nation. According to local Christmas tree growers, 90 percent of their sales took place through wholesaling and at least 50 percent of their pine trees were purchased by customers outside of the regulated area.

Vermont. There are 53 nurseries and 15 cut Christmas tree farms that operate in the county in Vermont that was added to the list of quarantined areas by the interim rule. According to the Vermont Christmas Tree Association, Christmas tree growers sold more than half of their pine trees and pine products to customers outside the regulated area.

Virginia. There are 14 nurseries and 8 cut Christmas tree farms that operate in the county in Virginia that was added to the list of quarantined areas by the interim rule. Christmas tree growers in that county sell more than half of their pine trees and pine products to customers outside the regulated area.

Small Entity Impact

The Small Business Administration (SBA) has established size standards to determine whether an entity would be considered small. According to the SBA standards, nursery stock growers are considered small if their annual sales total $750,000 or less. Similarly, Christmas tree growers are considered small if their annual sales are $5 million or less. According to the 1997 Agricultural Census, the vast majority of the affected nurseries and Christmas tree farms may be considered small.

We have determined that the nurseries and Christmas tree growers in most of the 37 counties that are now listed as quarantined areas will not be significantly affected by the interim

rule, either because pine species comprise a very minor share of their products or because their shipments do not leave the quarantined areas.

However, some nurseries and Christmas tree growers affected by the interim rule have markets that are out-of-county and/or out-of-State. These affected entities can maintain their markets outside the quarantined areas by arranging for the issuance of certificates or limited permits based on inspection or treatment of the regulated articles. Inspections, in some cases, are already occurring for other purposes; therefore, inspecting for PSB will add minimal cost. Also, any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement with the Animal and Plant Health Inspection Service whereby that person, rather than an inspector, may issue a certificate or limited permit for the interstate movement of eligible regulated articles. Costs and potential inconvenience are most likely for producers of live pine nursery stock, since inspection is required for each live plant before it may be moved interstate from a quarantined area. However, many producers must already have their products inspected for other pests, and adding another inspection will likely be a relatively small burden.

In contrast to the losses associated with the damage caused by PSB, the potential costs and inconvenience associated with inspections and treatment are minimal. The effect on those few small entities that do move regulated articles out-of-county and/or interstate is minimized by the availability of treatments and compliance agreements that, in most cases, allow these small entities to move regulated articles with very little additional cost.

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 243–245 on January 5, 2004.

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 30th day of April 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–10310 Filed 5–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 00–024–2]

RIN 0579–AB22

Veterinary Diagnostic Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to increase the user fees for veterinary diagnostic services to reflect changes in our operating costs and changes in calculating our costs. We are also setting rates for multiple fiscal years. These actions are necessary to ensure that we recover the actual costs of providing these services. We are also providing for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

DATES: *Effective Date:* June 7, 2004.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Dr. Randall Levings, Director, National Veterinary Services Laboratories, 1800 Dayton Road, PO Box 844, Ames, IA 50010; (515) 663–7357.

For information concerning user fee rate development, contact Mrs. Kris Caraher, User Fees Section Head, Financial Systems and Services Branch, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). These user fees are authorized by § 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (21 U.S.C. 136a), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

On July 24, 2003, we published in the **Federal Register** (68 FR 43661–43673, Docket No. 00–024–1) a proposed rule to increase the user fees for veterinary diagnostic services to reflect changes in our operating costs and changes in calculating our costs, and to establish rates for multiple fiscal years. Operating costs have increased since these user fees were established in a final rule published in the **Federal Register** on October 7, 1998 (63 FR 53783–53798, Docket No. 94–115–2). Therefore, the user fees need to be updated to reflect those increases. However, the main reason for the increase in the fees is cost data gathered through new cost-finding techniques employed by APHIS. The Statement of Federal Financial Accounting Standards (SFFAS) No. 4, "Managerial Cost Accounting Standards and Concepts," issued by the Office of Management and Budget, mandated that APHIS capture cost accounting data in its program costs. We were required to accumulate and report the costs of veterinary diagnostic activities on a regular basis through the use of cost accounting systems and cost finding techniques. In order to comply with SFFAS No. 4, APHIS conducted an Activity Based Costing (ABC) project at the National Veterinary Services Laboratories in Ames, IA, which identified the sources of all costs for veterinary diagnostic services. As a result of that project, we determined that costs for user fee-related services were not adequately being recovered through user fee collections. Based on this determination, we proposed new fees to recover these newly identified costs. Each of the updated user fees contains a proportionate share of the costs identified in the ABC study.

We solicited comments concerning our proposal for 60 days ending September 22, 2003. We received two comments by that date, from a livestock exporting company and a State laboratory.

One commenter, the livestock exporter, stated that the proposed fee

increases could force his company to move its operations to Canada, where he says costs are lower, or to cease operations. He described his company as the Pacific Northwest's only permanent livestock export inspection facility.

APHIS has received no directly appropriated funds to provide import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors since fiscal year 1992. Rather, the Food, Agriculture, Conservation, and Trade Act of 1990, as amended, and the Animal Health Protection Act authorize the U.S. Department of Agriculture to prescribe and collect user fees for those services. Therefore, to continue to provide those services, we must recover our costs from the customers who benefit from those services.

For reasons described in the economic analysis we provided in the proposed rule, we do not anticipate that the fee increases in this rule will cause exports to decline or result in decreased testing. While APHIS hopes that this fee increase does not cause the commenter's inspection facility to close, such facilities operate throughout the United States; if the commenter's facility closed, inspections would be performed at the next closest or next convenient location. We are not making any changes to the proposed rule in response to this comment.

One commenter stated that the user fee increases in our proposed rule would result in a loss of revenue for the National Veterinary Services Laboratories, creating a need for further increases in the user fees.

In response, we would like to reiterate that our user fees are calculated for full cost recovery only. They are not designed to meet any other financial goals, including revenue generation.

One commenter suggested that the proposed fee increases would result in APHIS' veterinary diagnostic services being used less frequently, which would in turn negatively affect the agency's proficiency levels and information base.

As mentioned previously, we do not expect that APHIS' veterinary diagnostic services will be used less frequently under the new user fees. In any case, we believe that our veterinary diagnostic professionals have proficiency levels and an information base that are adequate to ensure continued competent performance.

One commenter stated that the fees in our proposed rule did not consider economies of scale.

As discussed in the proposed rule, we considered continuing a discount that applied to all diagnostic, non-import-related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody virus neutralization, and peroxidase linked antibody tests. This discount applied to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. However, we reevaluated the time it takes to conduct these additional tests and determined that it was no longer cost effective to perform the tests at a discount. If we determine that our veterinary diagnostic services can be provided at a discount at certain volumes, we will adjust our user fees accordingly in a subsequent rulemaking.

One commenter expressed concern about the effect the proposed user fees would have on U.S. exporters in general.

We realize that any increase in user fees will increase the up-front cost of doing business for exporters, and we have attempted to keep the costs of our services as low as possible. However, as we explained in the proposed rule, operating costs have increased since the user fees for veterinary diagnostic services were established in 1998, and the ABC project at the National Veterinary Services Laboratories demonstrated that APHIS has not been recovering the full costs of providing user-fee related services through its established user fees. Implementing the user fees in this final rule will ensure that APHIS is able to provide veterinary diagnostic services and recover the cost of these services by the user fees charged. We are making no changes to the proposed rule in response to this comment.

One commenter suggested that APHIS should not collect user fees for tests for animal diseases that can severely impact public health or have serious economic consequences for other reasons. The commenter gave as an example arboviral encephalitides, stating that the costs for diagnosing and controlling this disease were funded through tax dollars in New Jersey.

Our regulations exempt from user fees veterinary diagnostic services provided in connection with (1) Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases), (2) zoonotic disease surveillance when the Administrator has determined that there is a significant threat to human health, and (3) detection of foreign animal diseases. We believe that these exemptions address the problem of funding diagnostic services for animal diseases that could have major public health or economic impacts.

One commenter suggested that, with the fee increases proposed, APHIS would become more like a business than a service organization, and the agency's partnership with the States would be strained.

APHIS is committed to cooperating with the States in order to safeguard U.S. animal health, and, as described above, APHIS provides many services to help control dangerous animal diseases at no cost. However, we must charge user fees that accurately reflect the cost of providing veterinary diagnostic services in order to provide those services. We are making no changes in response to these comments.

However, we are making a change to one of the proposed user fees in this final rule. The proposed user fee schedule for virus titration, which was listed in a table in § 130.14(c), listed the fee for that service for fiscal year 2006 as $110.00. The correct fee is $119.00. We are correcting the error in this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed above.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In this final rule, we are increasing the user fees for veterinary diagnostic services to reflect changes in operating costs and changes in calculating our costs. These actions are necessary to ensure that we recover the actual costs of providing these services. We are also providing for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. The reserve will ensure that we have sufficient operating funds in cases of fluctuations in activity volumes, bad debt, program shutdown, or customer insolvency. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

In our July 2003 proposed rule, under the heading "Executive Order 12866 and Regulatory Flexibility Act," we provided a detailed analysis of the possible economic effects of the proposed fee increases on users of veterinary diagnostic services. The conclusions of that analysis are summarized below.

The impacts of the increases in veterinary diagnostic user fees in this final rule are expected to be muted. The majority of the changes to the user fees

are either small, associated with few users, or both. Over the period covered by this final rule, more than 60 percent of the individual increases are less than $50, nearly 16 percent increase by less than $10, and about 65 percent are associated with 100 or fewer users. The majority of the fees in this final rule should also make only a small contribution to the total additional fee collections and, therefore, will have a minor impact on the users of those services. This is either because the change is small or the projected volume associated with the user fee is small, or both. Even in those instances in which the change in a user fee will generate a larger total increase in collections, the impact should not be significant because the fees are: Small fees applied to a large annual volume of users, large fees applied to a very small volume of users, fees that represent a small percentage of the overall costs associated with a user's output, single fees for reagents with numerous final users, or fees that enhance the marketability of the user's final outputs. Therefore, the increases are not generally expected to substantially reduce profits or impede exports or imports. Indeed, the full burden of the user fee changes is not likely to be borne entirely by the purchasers of products and services.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

■ Accordingly, we are amending 9 CFR part 130 as follows:

PART 130—USER FEES

■ 1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 130.14, the tables in paragraphs (a) through (c) are revised to read as follows:

§ 130.14 User fees for FADDL veterinary diagnostics.

(a) * * *

Reagent	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bovine antiserum, any agent	1 mL	$150.00	$155.00	$160.00	$165.00
Caprine antiserum, any agent	1 mL	184.00	189.00	195.00	202.00
Cell culture antigen/microorganism	1 mL	103.00	106.00	109.00	111.00
Equine antiserum, any agent	1 mL	186.00	192.00	198.00	204.00
Fluorescent antibody conjugate	1 mL	169.00	172.00	176.00	179.00
Guinea pig antiserum, any agent	1 mL	184.00	189.00	194.00	200.00
Monoclonal antibody	1 mL	222.00	229.00	235.00	243.00
Ovine antiserum, any agent	1 mL	176.00	181.00	187.00	193.00
Porcine antiserum, any agent	1 mL	152.00	157.00	162.00	167.00
Rabbit antiserum, any agent	1 mL	179.00	185.00	190.00	196.00

(b) * * *

Test	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Agar gel immunodiffusion	Test	$30.00	$31.00	$32.00	$33.00
Card	Test	17.00	17.00	18.00	18.00
Complement fixation	Test	36.00	37.00	38.00	40.00
Direct immunofluorescent antibody	Test	22.00	23.00	24.00	25.00
Enzyme linked immunosorbent assay	Test	26.00	27.00	28.00	29.00
Fluorescent antibody neutralization (classical swine fever).	Test	194.00	201.00	208.00	215.00
Hemagglutination inhibition	Test	57.00	59.00	61.00	63.00
Immunoperoxidase	Test	29.00	30.00	31.00	32.00
Indirect fluorescent antibody	Test	35.00	36.00	37.00	39.00
In-vitro safety	Test	570.00	589.00	609.00	630.00
In-vivo safety	Test	5,329.00	5,387.00	5,447.00	5,509.00
Latex agglutination	Test	23.00	24.00	25.00	26.00
Tube agglutination	Test	28.00	28.00	29.00	30.00
Virus isolation (oesophageal/pharyngeal)	Test	180.00	186.00	192.00	199.00
Virus isolation in embryonated eggs	Test	346.00	358.00	370.00	383.00
Virus isolation, other	Test	155.00	160.00	166.00	171.00

Test	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Virus neutralization	Test	52.00	54.00	56.00	58.00

(c) * * *

Veterinary diagnostic service	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bacterial isolation	Test	$112.00	$115.00	$119.00	$123.00
Hourly user fee services [1]	Hour	445.00	460.00	476.00	492.00
Hourly user fee services—Quarter hour	Quarter hour	111.00	115.00	119.00	123.00
Infected cells on chamber slides or plates	Slide	49.00	50.00	51.00	53.00
Reference animal tissues for immunohistochemistry	Set	171.00	177.00	182.00	187.00
Sterilization by gamma radiation	Can	1,740.00	1,799.00	1,860.00	1,923.00
Training (school or technical assistance)	Per person per day	910.00	941.00	973.00	1,006.00
Virus titration	Test	112.00	115.00	119.00	123.00

[1] For all veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

■ 3. In § 130.15, the tables in paragraphs (a) and (b) are revised to read as follows:

§ 130.15 User fees for veterinary diagnostic isolation and identification tests performed at NVSL (excluding FADDL) or other authorized site.

(a) * * *

Test	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bacterial identification, automated	Isolate	$48.00	$50.00	$51.00	$53.00
Bacterial identification, non-automated	Isolate	81.00	84.00	87.00	90.00
Bacterial isolation	Sample	33.00	34.00	35.00	36.00
Bacterial serotyping, all other	Isolate	51.00	52.00	53.00	55.00
Bacterial serotyping, Pasteurella multocida	Isolate	16.00	17.00	18.00	18.00
Bacterial serotyping, Salmonella	Isolate	33.00	34.00	35.00	36.00
Bacterial toxin typing	Isolate	109.00	112.00	116.00	120.00
Bacteriology requiring special characterization	Test	83.00	86.00	89.00	92.00
DNA fingerprinting	Test	54.00	56.00	58.00	59.00
DNA/RNA probe	Test	77.00	79.00	81.00	83.00
Fluorescent antibody	Test	17.00	17.00	18.00	19.00
Mycobacterium identification (biochemical)	Isolate	104.00	107.00	111.00	114.00
Mycobacterium identification (gas chromatography)	Procedure	87.00	90.00	93.00	96.00
Mycobacterium isolation, animal inoculations	Submission	770.00	791.00	814.00	837.00
Mycobacterium isolation, all other	Submission	136.00	141.00	146.00	151.00
Mycobacterium paratuberculosis isolation	Submission	65.00	67.00	70.00	72.00
Phage typing, all other	Isolate	38.00	39.00	41.00	42.00
Phage typing, Salmonella enteritidis	Isolate	21.00	22.00	23.00	24.00

(b) * * *

Test	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Fluorescent antibody tissue section	Test	$27.00	$27.00	$28.00	$29.00
Virus isolation	Test	43.00	45.00	46.00	48.00

■ 4. In § 130.16, the tables in paragraphs (a) and (b) are revised to read as follows:

§ 130.16 User fees for veterinary diagnostic serology tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) * * *

Test	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Brucella ring (BRT)	Test	$33.00	$34.00	$35.00	$36.00
Brucella ring, heat inactivated (HIRT)	Test	33.00	34.00	35.00	36.00
Brucella ring, serial (Serial BRT)	Test	49.00	51.00	53.00	54.00
Buffered acidified plate antigen presumptive	Test	6.00	7.00	7.00	7.00
Card	Test	4.00	4.00	4.00	4.00
Complement fixation	Test	15.00	15.00	16.00	16.00
Enzyme linked immunosorbent assay	Test	15.00	15.00	16.00	16.00
Indirect fluorescent antibody	Test	13.00	13.00	14.00	14.00
Microscopic agglutination-includes up to 5 serovars	Sample	21.00	22.00	23.00	24.00
Microscopic agglutination-each serovar in excess of 5 serovars.	Sample	4.00	4.00	4.00	4.00
Particle concentration fluorescent immunoassay (PCFIA).	Test	33.00	34.00	35.00	36.00
Plate	Test	6.00	7.00	7.00	7.00
Rapid automated presumptive	Test	6.00	6.00	6.00	7.00
Rivanol	Test	6.00	7.00	7.00	7.00
Tube agglutination	Test	6.00	7.00	7.00	7.00

(b) * * *

Test	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Agar gel immunodiffusion	Test	$15.00	$15.00	$16.00	$16.00
Complement fixation	Test	15.00	15.00	16.00	16.00
Enzyme linked immunosorbent assay	Test	15.00	15.00	16.00	16.00
Hemagglutination inhibition	Test	13.00	13.00	14.00	14.00
Indirect fluorescent antibody	Test	13.00	13.00	14.00	14.00
Latex agglutination	Test	15.00	15.00	16.00	16.00
Peroxidase linked antibody	Test	14.00	14.00	15.00	15.00
Plaque reduction neutralization	Test	16.00	17.00	17.00	18.00
Rabies fluorescent antibody neutralization	Test	41.00	42.00	44.00	45.00
Virus neutralization	Test	12.00	12.00	13.00	13.00

■ 5. In § 130.17, the table in paragraph (a) is revised to read as follows:

§ 130.17 User fees for other veterinary diagnostic laboratory tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) * * *

Test	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Aflatoxin quantitation	Test	$27.00	$28.00	$29.00	$30.00
Aflatoxin screen	Test	26.00	27.00	28.00	29.00
Agar gel immunodiffusion spp. identification	Test	11.00	12.00	12.00	13.00
Antibiotic (bioautography) quantitation	Test	59.00	61.00	63.00	65.00
Antibiotic (bioautography) screen	Test	108.00	112.00	115.00	119.00
Antibiotic inhibition	Test	59.00	61.00	63.00	65.00
Arsenic	Test	16.00	16.00	17.00	17.00
Ergot alkaloid screen	Test	59.00	61.00	63.00	65.00
Ergot alkaloid confirmation	Test	77.00	80.00	83.00	86.00
Feed microscopy	Test	59.00	61.00	63.00	65.00
Fumonisin only	Test	33.00	35.00	36.00	37.00
Gossypol	Test	89.00	92.00	95.00	98.00
Mercury	Test	131.00	135.00	140.00	145.00
Metals screen	Test	40.00	41.00	43.00	44.00
Metals single element confirmation	Test	11.00	12.00	12.00	13.00

Test	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Mycotoxin: aflatoxin-liver	Test	108.00	112.00	115.00	119.00
Mycotoxin screen	Test	43.00	44.00	46.00	48.00
Nitrate/nitrite	Test	59.00	61.00	63.00	65.00
Organic compound confirmation	Test	79.00	82.00	85.00	88.00
Organic compound screen	Test	137.00	141.00	146.00	151.00
Parasitology	Test	26.00	27.00	28.00	29.00
Pesticide quantitation	Test	119.00	123.00	128.00	132.00
Pesticide screen	Test	54.00	56.00	58.00	60.00
pH	Test	24.00	25.00	26.00	26.00
Plate cylinder	Test	89.00	92.00	95.00	98.00
Selenium	Test	40.00	41.00	43.00	44.00
Silicate/carbonate disinfectant	Test	59.00	61.00	63.00	65.00
Temperature disks	Test	118.00	122.00	126.00	130.00
Toxicant quantitation, other	Test	99.00	103.00	106.00	110.00
Toxicant screen, other	Test	30.00	31.00	32.00	33.00
Vomitoxin only	Test	48.00	49.00	51.00	53.00
Water activity	Test	30.00	31.00	32.00	33.00
Zearaleone quantitation	Test	48.00	49.00	51.00	53.00
Zearaleone screen	Test	26.00	27.00	28.00	29.00

* * * * *

■ 6. In § 130.18, the tables in paragraphs (a) and (b) are revised to read as follows:

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

(a) * * *

Reagent	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Anaplasma card test antigen	2 mL	$87.00	$89.00	$92.00	$95.00
Anaplasma card test kit without antigen	Kit	115.00	119.00	123.00	127.00
Anaplasma CF antigen	2 mL	46.00	46.00	46.00	46.00
Anaplasma stabilate	4.5 mL	160.00	165.00	170.00	175.00
Avian origin bacterial antiserums	1 mL	43.00	44.00	46.00	47.00
Bacterial agglutinating antigens other than brucella and salmonella pullorum.	5 mL	49.00	51.00	52.00	54.00
Bacterial conjugates	1 mL	87.00	90.00	93.00	96.00
Bacterial disease CF antigens, all other	1 mL	26.00	27.00	28.00	29.00
Bacterial ELISA antigens	1 mL	27.00	27.00	28.00	29.00
Bacterial or protozoal, antiserums, all other	1 mL	54.00	56.00	58.00	60.00
Bacterial reagent culture [1]	Culture	66.00	68.00	70.00	73.00
Bacterial reference culture [2]	Culture	206.00	213.00	221.00	228.00
Bacteriophage reference culture	Culture	155.00	161.00	166.00	172.00
Bovine serum factor	1 mL	16.00	17.00	17.00	18.00
Brucella abortus CF antigen	60 mL	136.00	141.00	146.00	151.00
Brucella agglutination antigens, all other	60 mL	136.00	141.00	146.00	151.00
Brucella buffered plate antigen	60 mL	155.00	161.00	166.00	172.00
Brucella canis tube antigen	25 mL	102.00	105.00	107.00	109.00
Brucella card testantigen (packaged)	Package	81.00	84.00	87.00	90.00
Brucella card test kit without antigen	Kit	106.00	109.00	111.00	113.00
Brucella cells	Gram	17.00	17.00	18.00	18.00
Brucella cells, dried	Pellet	5.00	5.00	5.00	6.00
Brucella ring test antigen	60 mL	218.00	225.00	233.00	241.00
Brucella rivanol solution	60 mL	27.00	27.00	28.00	29.00
Dourine CF antigen	1 mL	81.00	84.00	86.00	89.00
Dourine stabilate	4.5 mL	102.00	105.00	107.00	109.00
Equine and bovine origin babesia species antiserums.	1 mL	115.00	119.00	123.00	127.00
Equine negative control CF antigen	1 mL	267.00	272.00	276.00	281.00
Flazo-orange	3 mL	11.00	12.00	12.00	13.00
Glanders CF antigen	1 mL	70.00	73.00	75.00	77.00
Hemoparasitic disease CF antigens, all other	1 mL	489.00	505.00	522.00	540.00
Leptospira transport medium	10 mL	4.00	4.00	4.00	4.00
Monoclonal antibody	1 mL	88.00	90.00	93.00	95.00
Mycobacterium spp. old tuberculin	1 mL	21.00	22.00	23.00	24.00
Mycobacterium spp. PPD	1 mL	16.00	17.00	18.00	18.00
Mycoplasma hemagglutination antigens	5 mL	163.00	168.00	174.00	180.00
Negative control serums	1 mL	16.00	17.00	18.00	18.00
Rabbit origin bacterial antiserum	1 mL	47.00	48.00	50.00	52.00

Reagent	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Salmonella pullorum microagglutination antigen	5 mL	14.00	14.00	15.00	15.00
Stabilates, all other	4.5 mL	623.00	640.00	659.00	678.00

[1] A reagent culture is a bacterial culture that has been subcultured one or more times after being tested for purity and identity. It is intended for use as a reagent with a diagnostic test such as the leptospiral microagglutination test.
[2] A reference culture is a bacterial culture that has been thoroughly tested for purity and identity. It should be suitable as a master seed for future cultures.

(b) * * *

Reagent	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Antigen, except avian influenza and chlamydia psittaci antigens, any.	2 mL	$55.00	$57.00	$59.00	$61.00
Avian antiserum except avian influenza antiserum, any.	2 mL	44.00	45.00	47.00	48.00
Avian influenza antigen, any	2 mL	30.00	31.00	32.00	33.00
Avian influenza antiserum, any	6 mL	93.00	96.00	100.00	103.00
Bovine or ovine serum, any	2 mL	115.00	119.00	123.00	127.00
Cell culture	Flask	136.00	141.00	146.00	151.00
Chlamydia psittaci spp. of origin monoclonal antibody panel.	Panel	88.00	90.00	93.00	95.00
Conjugate, any	1 mL	66.00	68.00	71.00	73.00
Diluted positive control serum, any	2 mL	22.00	23.00	24.00	24.00
Equine antiserum, any	2 mL	41.00	42.00	44.00	45.00
Monoclonal antibody	1 mL	94.00	96.00	99.00	102.00
Other spp. antiserum, any	1 mL	51.00	51.00	52.00	52.00
Porcine antiserum, any	2 mL	95.00	99.00	102.00	105.00
Porcine tissue sets	Tissue set	152.00	153.00	155.00	157.00
Positive control tissues, all	2 cm^2 section	55.00	57.00	58.00	60.00
Rabbit origin antiserum	1 mL	47.00	48.00	50.00	52.00
Reference virus, any	0.6 mL	163.00	169.00	174.00	180.00
Viruses (except reference viruses), chlamydia psittaci agent or chlamydia psittaci antigen, any.	0.6 mL	27.00	28.00	29.00	30.00

■ 7. In § 130.19, the table in paragraph (a) is revised to read as follows:

§ 130.19 User fees for other veterinary diagnostic services or materials provided at NVSL (excluding FADDL).

(a) * * *

Service	Unit	User fee			
		June 7, 2004–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Antimicrobial susceptibility test	Isolate	$95.00	$98.00	$101.00	$105.00
Avian safety test	Test	3,774.00	3,871.00	3,972.00	4,075.00
Check tests, culture	Kit[1]	162.00	167.00	171.00	176.00
Check tests, serology, all other	Kit[1]	326.00	337.00	349.00	361.00
Fetal bovine serum safety test	Verification	1,061.00	1,078.00	1,096.00	1,114.00
Hourly user fee services:[2]					
Hour	Hour	84.00	84.00	84.00	84.00
Quarter hour	Quarter hour	21.00	21.00	21.00	21.00
Minimum		25.00	25.00	25.00	25.00
Manual, brucellosis culture	1 copy	104.00	107.00	111.00	114.00
Manual, tuberculosis culture (English or Spanish)	1 copy	155.00	161.00	166.00	172.00
Manual, Veterinary mycology	1 copy	155.00	161.00	166.00	172.00
Manuals or standard operating procedure (SOP), all other.	1 copy	31.00	32.00	33.00	34.00
Manuals or SOP, per page	1 page	2.00	2.00	2.00	2.00
Training (school or technical assistance)	Per person per day	300.00	310.00	320.00	331.00

[1] Any reagents required for the check test will be charged separately.
[2] For veterinary diagnostic services for which there is no flat rate user fee the hourly rate user fee will be calculated for the actual time required to provide the service.

* * * * *

Done in Washington, DC, this 29th day of April 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–10309 Filed 5–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 040220063–4063–01]

RIN 0694–AC64

Protective Equipment Export License Jurisdiction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises the Commerce Control List to conform the description of certain protection and detection equipment to that found in the Wassenaar Arrangement List of Dual Use Goods and Technologies (the Dual Use List), to impose national security and anti-terrorism license requirements on those items, and to impose antiterrorism controls on certain items that are excluded from the Dual Use List.

DATES: This rule is effective May 6, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Hubinger, Office of Chemical and Biological Controls and Treaty Compliance, telephone: (202) 482–5223, e-mail *shubinge@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Commerce Control List (15 CFR part 774, supp. 1) (CCL) contains entries called Export Control Classification Numbers (ECCNs) and is used in determining whether a license from the Bureau of Industry and Security (BIS) is required for certain exports and reexports. It also describes some items that are subject to the export licensing jurisdiction of the Directorate of Defense Trade Controls (DTC), U.S. Department of State. In general, DTC has export licensing authority over items that have been specifically designed, developed, configured, adapted, or modified for military application and do not have predominantly civil applications or that have significant military or intelligence applications. BIS generally has export licensing authority over items having predominantly civil uses even if they also may be used by the military. Prior to publication of this rule ECCN 1A004 referred readers to the DTC controls with regard to "[p]rotective and detection equipment and components, not specially designed for military use."

This rule revises ECCN 1A004 to emulate entry 1.A.4 on the Wassenaar Arrangement List of Dual Use Goods and Technologies, including an exclusion note from that entry. This rule applies national security (NS2) and antiterrorism (AT1) controls to items covered by ECCN 1A004, including gas masks, filter canisters, decontamination equipment, protective suits, gloves and shoes specially designed or modified for defense against biological agents or radioactive materials adapted for use in war or chemical warfare agents, and certain nuclear, chemical, and biological detection systems. The national security controls require a license for export or reexport to all destinations except Country Group A:1 and cooperating countries as listed in 15 CFR part 740, supp. No. 1.

This rule also creates a new ECCN 1A995 that imposes antiterrorism controls (AT1) on personal radiation monitoring dosimeters and equipment limited by design or function to protect against hazards specific to civil industries, such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or to the food industry that are excluded from 1A004. The antiterrorism controls require a license for export or reexport to countries designated by the Secretary of State as state sponsors of international terrorism. New ECCN 1A995 includes a note that items for protection against chemical or biological agents that are consumer goods, packaged for retail sale or personal use and medical products are excluded from 1A995, and are EAR99. EAR99 items are not listed in any specific entry on the Commerce Control List, but are subject to other provisions of the EAR, including those that impose a license requirement based on recipient or end-use, those that apply to embargoed destinations, the prohibitions on violating denial orders, and export clearance requirements.

The antiterrorism controls imposed by this rule are new foreign policy controls. As required by the Export Administration Act of 1979, as amended (the Act), a report on the imposition of these controls was delivered to Congress on April 27, 2004.

Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Savings Clause

Exports and reexports that did not require a license prior to publication of this rule and for which this rule imposes a new license requirement may be made without a license if the items being exported or reexported were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export or reexport on May 20, 2004, and exported or reexported on or before June 7, 2004. Any such exports or reexports not actually made before midnight on June 7, 2004, require a license in accordance with this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of E.O. 12866.

2. 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 of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves collections of information subject to the PRA. These collections have been approved by the Office of Management and Budget (OMB) under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually form BIS–748P. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to 202.395.285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with federalism implications as this term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C.

553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this rule is being issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade.

■ For the reasons set forth in the preamble, the supplement No. 1 to part 774 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

Supplement No. 1 to Part 774—[Amended]

■ 1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c.; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 2. Supplement No. 1 to part 774 (the Commerce Control List), Category 1—"Materials, Chemicals, 'Microorganisms' and 'Toxins' ". Export Control Classification Number 1A004 is revised to read as follows:

1A004 Protective and detection equipment and components not specially designed for military use as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value

Related Controls: (1) *See* ECCNs 1A995, 2B351, and 2B352. (2) Chemical and biological protective and detection equipment specifically designed, developed, modified, configured, or adapted for military applications is subject to the export licensing jurisdiction of the Department of State, Directorate of Defense Trade Controls (*see* 22 CFR part 121, category XIV(f)), as is commercial equipment that incorporates components or parts controlled under that category unless those components or parts are: (1) Integral to the device; (2) inseparable from the device; and (3) incapable of replacement without compromising the effectiveness of the device, in which case the equipment is subject to the export licensing jurisdiction of the Department of Commerce under ECCN 1A004.

Related Definitions: N/A

Items:

a. Gas masks, filter canisters and decontamination equipment therefor designed or modified for defense against biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents and specially designed components therefor;

b. Protective suits, gloves and shoes specially designed or modified for defense against biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents;

c. Nuclear, biological and chemical (NBC) detection systems specially designed or modified for detection or identification of biological agents or radioactive materials adapted for use in war or chemical warfare (CW) agents and specially designed components therefor.

Note: In this entry, the phrase "adapted for use in war" means: Any modification or selection (such as altering purity, shelf life, virulence, dissemination characteristics, or resistance to UV radiation) designed to increase the effectiveness in producing casualties in humans or animals, degrading equipment or damaging crops or the environment.

Note: 1A004 does not control:

a. Personal radiation monitoring dosimeters;

b. Equipment limited by design or function to protect against hazards specific to civil industries, such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or to the food industry.

Note: Protective equipment and components are classified as 1A004 if they have been tested and proven effective against penetration of BW/CW agents or their simulants using test protocols published by a U.S. Government Agency, such as the National Institute of Occupational Safety and Health (NIOSH) or the U.S. Army, for use by emergency responders or evacuees in chemical, biological, radiological or nuclear environments and labeled with or otherwise identified by the manufacturer or exporter as being effective against penetration by BW/CW agents even if such equipment or components are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.

■ 3. In supplement No. 1 to part 774 (Commerce Control List), Category 1—"Materials, Chemicals, 'Microorganisms' & 'Toxins' ", add a new Export Control Classification Number 1A995 immediately following Export Control Classification Number 1A985 and immediately preceding Export Control Classification Number 1A999 reading as follows:

1A995 Protective and detection equipment and components not specially designed for military use and not controlled by ECCN 1A004, as follows (see List of Items Controlled).

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value

Related controls: See ECCNs 1A004, 2B351, and 2B352.

Related Definitions: N/A

Items:

a. Personal radiation monitoring dosimeters;

b. Equipment limited by design or function to protect against hazards specific to civil industries, such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or to the food industry.

Note: This entry (1A995) does not control items for protection against chemical or biological agents that are consumer goods, packaged for retail sale or personal use, or medical products, such as latex exam gloves, latex surgical gloves, liquid disinfectant soap, disposable surgical drapes, surgical gowns, surgical foot covers, and surgical masks. Such items are classified as EAR99.

■ 4. Supplement No. 1 to part 774 (the Commerce Control List), Category 2—"Materials Processing", Export Control Classification Number 2B351 is amended by revising the Related Controls paragraph of the List of Items Controlled section to read as follows:

2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See ECCNs 1A004 and 1A995 for detection equipment that is not covered by this entry.

Related Definitions: * * *

Items: * * *

■ 5. Supplement No. 1 to part 774 (the Commerce Control List), Category 2—"Materials Processing", Export Control Classification Number 2B352 is amended by revising the Related Contrc's paragraph of the List of Items Controlled section to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See ECCNs 1A004 and 1A995 for protective equipment that is not covered by this entry.

Related Definitions: * * *

Items: * * *

Dated: April 29, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–10230 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 040414115–4115–01]

RIN 0694–AD00

December 2003 Wassenaar Arrangement Plenary Agreement Implementation: Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements; and Interpretation Regarding NUMA Technology; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Industry and Security published in the **Federal Register** of April 29, 2004, a final rule that revised certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). This document corrects one error that appeared in ECCN 3A001 in that rule.

DATES: This rule is effective May 6, 2004.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2440 or E-mail: *scook@bis.doc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security published in the **Federal Register** of April 29, 2004 [69 FR 23598], a final rule that revised certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). Part of the Related Controls paragraph in the List of Items Controlled section of ECCN 3A001 was inadvertently deleted. This document corrects this error.

Rulemaking Requirements

1. The final rule has been determined to be not significant for purposes of E.O. 12866.

2. 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 of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by OMB under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 774

Exports, Foreign Trade, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 774—[CORRECTED]

■ 1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, 3 CFR, 2003 Comp., p. 328.

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A001 is amended revising the "Related Controls" paragraph in the List of Items Controlled section, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) The following commodities are under the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121) when "space qualified" and operating at frequencies higher than 31.8 GHz: helix tubes

(traveling wave tubes (TWT)) defined in 3A001.b.1.a.4.c; microwave solid state amplifiers defined in 3A001.b.4.b traveling wave tube amplifiers (TWTA) defined in 3A001.b.8; and derivatives thereof; (2) "Space qualified" and radiation hardened photovoltaic arrays, as defined in 3A001.e.1.c, having silicon cells or having single, dual or triple junction solar cells that have gallium arsenide as one of the junctions, are subject to the export licensing authority of the Department of Commerce. All other "space qualified" and radiation hardened photovoltaic arrays defined in 3A001.e.1.c and spacecraft/satellite concentrators and batteries are under the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121). *See also* 3A101, 3A201, and 3A991.

Related Definitions: * * *

Items: * * *

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. 04–10229 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Ractopamine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is revising the animal drug regulations for medicated feeds to reflect the approved maximum concentration of ractopamine in Type B medicated feeds. This action is being taken to improve the accuracy of the agency's regulations.

DATES: This rule is effective May 6, 2004.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *eric.dubbin@fda.gov*.

SUPPLEMENTARY INFORMATION: FDA has found that parts 500 to 599 (21 CFR parts 500 to 599) of the Code of Federal Regulations does not reflect the approved maximum concentration of ractopamine in Type B medicated feeds. Higher levels of ractopamine in Type B medicated feeds were approved when this drug was approved for use in cattle on September 18, 2003 (68 FR 54658). At this time, FDA is amending the regulations in 21 CFR 558.4 to reflect the new maximum concentration of ractopamine in Type B medicated feeds.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

2. Section 558.4 *Requirement of a medicated feed mill license* is amended in paragraph (d) in the "Category I" table in the entry for "Ractopamine" in the "Type B maximum (200x)" column by removing "1.8 g/lb (0.4%)" and adding in its place "2.46 g/lb (0.54%)".

Dated: April 30, 2004.

Catherine P. Beck,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–10365 Filed 5–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9118]

RIN 1545–BC84

Loss Limitation Rules; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to TD 9118, which was published in the **Federal Register** on Thursday, March 18, 2004 (69 FR 12799), relating to certain aspects of the temporary regulations addressing the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group and to the consequences of treating subsidiary stock as worthless.

DATES: This correction is effective on March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Weiss (202) 622–7790 or Lola Johnson (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (TD 9118) that are the subject of this correction are under 1502 of the Internal Revenue Code.

Need for Correction

As published, TD 9118 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

§ 1.1502–35T [Corrected]

■ **Par. 2.** Section 1.1502–35T(f)(1), the language "expired as of the day following the last" is removed and the language "expired as of the beginning of the day following the last" is added in its place.

■ **Par. 3.** Section 1.1502–35T(f)(1), the language "shall be treated as expired as of the day" is removed and the language "shall be treated as expired as of the beginning of the day" is added in its place.

LaNita Van Dyke,

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

[FR Doc. 04–10223 Filed 5–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9126]

RIN 1545–BB10

Section 704(b) and Capital Account Revaluations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the capital account maintenance rules under section 704 of the Internal Revenue Code. These regulations expand the rules regarding a partnership's right to adjust capital accounts to reflect unrealized appreciation and depreciation in the value of partnership assets.

DATES: *Effective Date:* These regulations are effective May 6, 2004.

FOR FURTHER INFORMATION CONTACT: Laura Nash at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, proposed regulations [68 FR 39498] relating to the capital account maintenance rules under section 704 of the Internal Revenue Code (Code) were published in the **Federal Register**. The proposed regulations expanded the circumstances under which a partnership is permitted to increase or decrease the capital accounts of the partners to reflect a revaluation of partnership property on the partnership's books. Specifically, the regulations proposed to allow revaluations in connection with the grant of an interest in the partnership (other than a *de minimis* interest) on or after the date these final regulations are published in the **Federal Register** as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner. In addition, the notice of proposed rulemaking requested comments on other situations in which revaluations of partnership property should be permitted. No written or electronic comments were received in response to the notice of proposed rulemaking. No requests for a public hearing were received, and accordingly, no hearing was held.

Explanation of Provisions

This Treasury decision adopts the proposed regulations without change. The regulations apply to the grant of an interest in a partnership (other than a *de minimis* interest) on or after May 6, 2004, as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Laura Nash, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.704–1 is amended as follows:

■ 1. Paragraph (b)(2)(iv)(*f*)(*5*)(*iii*) is redesignated as paragraph (b)(2)(iv)(*f*)(*5*)(*iv*).

■ 2. New paragraph (b)(2)(iv)(*f*)(*5*)(*iii*) is added to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(*f*) * * *

(*5*) * * *

(*iii*) In connection with the grant of an interest in the partnership (other than a *de minimis* interest) on or after May 6, 2004, as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: April 29, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–10360 Filed 5–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–017]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Galveston Causeway Railroad Bascule Bridge across the Gulf Intracoastal Waterway, mile 357.2 west of Harvey Locks, at Galveston, Galveston County, Texas. This deviation allows the bridge to remain closed to navigation for eight hours on May 25, 2004. The deviation is necessary to repair and replace joints on the bearing plates of the bridge.

DATES: This deviation is effective from 7:30 a.m. until 5:30 p.m. on Tuesday, May 25, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The BNSF RR has requested a temporary deviation in order to remove and replace damaged portions of the Galveston Causeway Railroad Bascule Bridge across the Gulf

Intracoastal Waterway, mile 357.2 west of Harvey Locks, at Galveston, Galveston County, Texas. The repairs are necessary to ensure the safety of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7:30 a.m. until 11:30 a.m. and from 1:30 p.m. until 5:30 p.m. on Tuesday, May 25, 2004.

The bridge has a vertical clearance of 10 feet above mean high water in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. No alternate routes are available.

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

Dated: April 21, 2004.

J.W. Stark,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 04–10355 Filed 5–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–039]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain closed from 7 a.m. on May 17, 2004 through 4 p.m. on May 22, 2004, to facilitate bridge maintenance.

DATES: This deviation is effective from May 17, 2004 through May 22, 2004.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The New York City Department of Transportation (NYCDOT) Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

NYCDOT, requested a temporary deviation from the drawbridge operation regulations to facilitate bridge maintenance repairs. The bridge must remain in the closed position to perform these repairs.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from 7 a.m. on May 17, 2004 through 4 p.m. on May 22, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: April 27, 2004.

John L. Grenier,

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

[FR Doc. 04–10356 Filed 5–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–040]

RIN 1625–AA00

Safety Zone; Transit of Rig Pride Portland, Portland, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the oilrig Pride Portland and its assisting tugs during the unmooring and outbound transit of the rig from the vicinity of the Portland Ocean Terminal in Portland Harbor out to conduct sea trials, the return of the rig from sea trials and the final transit out of Portland Harbor upon completion of the rig's construction. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the transit of a large tow with limited maneuverability. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

DATES: *Effective Date:* This rule is effective from April 29, 2004 through June 30, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–040 and are available for inspection or copying at Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780–3251.

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 an NPRM. Due to the complex planning and coordination involved, final details for the transit were not provided to the Coast Guard until April 23, 2004, making it impossible to publish a NPRM or a final rule 30 days in advance.

Under 5 U.S.C. 533(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**. Any delay in implementing this rule would be contrary to the public interest due to the risks inherent in the transit of a large rig and assisting tugs with limited maneuverability in a narrow channel.

Background and Purpose

On April 23, 2004 representatives of Petrodrill Engineering NV presented the Coast Guard with plans for the transit of the oilrig Pride Portland. The rig will be towed from the Portland Ocean Terminal in Portland Harbor through the main channel out to sea with the assistance tugs. The tentative date for this operation is April 29, 2004 but may be changed due to weather, winds, or other unexpected delays. The rig will remain on sea trials for approximately two weeks and will then return to Portland. The tentative date for the return is May 15, 2004. Once final repairs and adjustments are made, and provisions loaded, the rig will depart Portland Harbor for its final destination. The tentative date for this departure is May 29, 2004 but may be earlier or later depending upon the necessary repairs, adjustments and provision schedules. This safety zone will remain in effect anytime the rig is underway, in the process of mooring or unmooring in Portland Harbor and during its

approaches to Portland Harbor in Casco Bay.

Discussion of Rule

This rule establishes a safety zone 100-yards around the oilrig Pride Portland, and any assisting tugs while the rig is in the process of mooring or unmooring, or connecting to the tugs in the vicinity of the Portland Ocean Terminal in Portland Harbor. When the Pride Portland is underway, this rule establishes a safety zone 200-yards ahead, and 100-yards aside and astern of the oilrig Pride Portland and assisting tugs. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the transit of a large oilrig with limited maneuverability. The Captain of the Port, Portland, Maine will notify the marine community when these zones are being enforced, using marine safety information broadcasts and on-scene notifications by Coast Guard personnel and patrol vessels.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation will not be significant for several reasons: There will be impact on the navigational channel for only a minimal amount of time, there is room for vessels to navigate around the zone, delays, if any, will be minimal, and broadcast notifications will be made to the maritime community advising them of the boundaries of the zone before and during its enforcement periods. During the transits vessels will be able to arrange safe passage with the pilot via VHF radio, Channels 13 or 16.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Portland Harbor and the main channel on the dates the transits occur.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The nature of this rule will dictate that the safety zone will not impede vessel traffic for an extended period of time. Vessel traffic can safely pass around the zone.

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

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping

requirements, Security measures, Waterways.

■ For the reasons set out 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. From April 29, 2004, through June 30, 2004, add temporary section, 165.T01–040 to read as follows:

§ 165.T01–040 Safety Zone; Portland, Maine, Tow of Rig Pride Portland.

(a) *Location.* The following areas are safety zones: (1) All navigable waters of Portland Harbor, extending from the surface to the sea floor, within 100-yards of the rig Pride Portland and any assisting tugs while the rig Pride Portland is in the process of mooring, unmooring or connecting to the tugs in the vicinity of the Portland Ocean Terminal in Portland Harbor.

(2) All navigable waters of Portland Harbor and Casco Bay extending from the surface to the sea floor, extending 200-yards ahead, and 100-yards aside and astern of the rig Pride Portland and any assisting tugs while the rig is underway.

(b) *Effective date.* This rule is effective from April 29, 2004, through June 30, 2004.

(c) *Regulations.* (1) The general regulations contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. The COTP or his designated representative will notify the maritime community of periods during which these zones will be enforced. Emergency response vessels are authorizes to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative. Upon being hailed by U.S. Coast Guard personnel or a U.S. Coast Guard vessel, via siren, radio, flashing light, or other means, those hailed shall proceed as directed.

(3) Entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

Dated: April 28, 2004.

Gregory D. Case,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Portland, Maine.

[FR Doc. 04–10354 Filed 5–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Memphis–04–002]

RIN 1625–AA00

Safety Zone; McCellan-Kerr Arkansas River, Mile 307 to 309.5, Fort Smith, AR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the McCellan-Kerr Arkansas River from mile 307 to mile 309.5 in Fort Smith, AR. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative.

DATES: This rule is effective from 9 p.m. until 10:15 p.m. on July 4, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Memphis-04–002] and are available for inspection or copying at Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, TN 38103 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer (CPO) James Dixon at Marine Safety Office Memphis, (901) 544–3941, extension 2116.

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 in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the hazards associated with a fireworks display.

Background and Purpose

The Mayor's 4th of July celebration fireworks display will be launched from a barge between mile 307 and 309.5 on the McCellan-Kerr Arkansas River. A hazardous situation could exist for vessels, mariners and spectators in the vicinity of the fireworks display. A safety zone is needed to protect those vessels, mariners and spectators from the hazards associated with this fireworks display.

Discussion of Rule

The Captain of the Port Memphis is establishing a safety zone for all waters of the McCellan-Kerr Arkansas River from mile 307 to mile 309.5 for the Mayor's 4th of July celebration fireworks display in Fort Smith, AR. Entry into this zone by persons or vessels is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or by telephone at (901) 544–3912, extension 2124. This rule is effective from 9 p.m. until 10:15 p.m. on July 4, 2004.

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).

This rule will only be in effect for approximately one hour and fifteen minutes. Notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following

entities, some of which may be small entities: the owners or operators of vessels intending to transit the McCellan-Kerr Arkansas River from mile 307 to 309.5 between 9 p.m. on July 4, 2004 until 10:15 p.m. on July 4, 2004. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for approximately one hour and fifteen minutes.

If you are a small business entity and are significantly affected by this regulation please contact CPO James Dixon, Marine Safety Office Memphis, TN at (901) 544–3941, extension 2116.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. 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 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 this rule is not expected to result in any significant adverse environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

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 temporary § 165.T08–025 to read as follows:

§ 165.T08–025 Safety Zone; McCellan-Kerr Arkansas River Mile 307.0 to Mile 309.5, Fort Smith, AR.

(a) *Location.* The following area is a safety zone: all waters of the McCellan-Kerr Arkansas River from mile 307 to mile 309.5, extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 9 p.m. until 10:15 p.m. on July 4, 2004.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Memphis.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port Memphis or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or by telephone at (901) 544–3912, extension 2124.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Memphis and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 27, 2004.

David C. Stalfort,

Commander, U.S. Coast Guard, Captain of the Port Memphis.

[FR Doc. 04–10353 Filed 5–5–04; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Permissible Barcode Symbology for Parcels Eligible for the Barcode Discount

AGENCY: Postal Service.

ACTION: Final rule with request for comments.

SUMMARY: We are amending the information published in the **Federal Register** on July 14, 1998 [63 FR 37946], that announced new requirements for Package Services parcels eligible for the barcode discount. The barcode discount was extended to Standard Mail® machinable parcels in the **Federal Register** on December 15, 2000 [65 FR 78537] that announced the R2000–1 rate case. The standards implementing the new requirements were subsequently published in *Postal Bulletin* 22122 (2–19–04, pages 6–8). The *Postal Bulletin* notice allowed for the optional use of the human-readable presentation of the ZIP Code™. This final rule modifies the standards to now require mailers to include the human-readable equivalent of the ZIP Code with all barcodes.

DATES: Effective May 6, 2004. Submit comments on or before May 20, 2004.

ADDRESSES: Mail or deliver comments to the Manager, Mailing Standards, Attn: Obataiye B. Akinwole, U.S. Postal Service, 1735 N Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may be submitted also by facsimile transmission to (703) 292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 11th Floor North, 475 L'Enfant Plaza SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole at (703) 292–3643.

SUPPLEMENTARY INFORMATION: On July 14, 1998, the Postal Service published in the **Federal Register** [63 FR 37946] a final rule setting forth Domestic Mail Manual (DMM) standards for Package Services barcodes. The DMM standards were subsequently published in *Postal Bulletin* 22122 (2–19–04, pages 6–8). Under the previous rule, the human-readable equivalent of the ZIP Code information was optional. Under the new rule, mailers are required to include the human-readable equivalent of the ZIP Code information to be eligible for the barcode discount. No other changes are made to the standards in DMM C850.

Using the UCC/EAN Code 128 barcode symbology will benefit mailers in a number of ways:

- Increased accuracy and improved service—reduces manual processing of parcels.
- Variable length—compact, accurate, and reliable.
- Easy data capture capabilities—international availability.

In order to reduce the looping of mail in processing, this rule requires the printing of the applicable AI and ZIP Code or ZIP+4® code whenever a barcode is printed.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ For the reasons noted above, the Postal Service adopts the following changes to the *Domestic Mail Manual*, which is incorporated by reference in the *Code of Federal Regulations* (CFR). *See* 39 CFR part 111.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the *Domestic Mail Manual* (DMM) as follows:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

* * * * *

C800 Automation-Compatible Mail

* * * * *

C850 Barcoding Standards for Parcels

* * * * *

2.0 Barcode Characteristics

* * * * *

2.5 Human-Readable Information

The human-readable information on the barcode must conform to one of the following options:

[Revise item a to read as follows:]

a. If the barcode is printed on the delivery address label and in close proximity to the address, the human-readable equivalent of the ZIP Code or ZIP+4 code (omitting the AI "420") encoded in the barcode preceded by the word "ZIP" must be printed between ⅛ inch and ½ inch below the barcode in 10-point or larger bold, sans serif type. This standard applies to barcodes printed under 1.1 or 1.2a, 1.2b, and 1.3.

* * * * *

[Revise item c to read as follows:]

c. For barcodes printed under 1.2 or 1.3, the human-readable presentation of the concatenated barcode must include the AI "91" and the full tracking identification number as text, the AI "420," and the ZIP Code or ZIP+4 code. The AI "420" and ZIP Code information must be parsed separately from the main body of the barcode text (*e.g.*, 420 99999 9101 2345 6789 1234 5678).

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–10154 Filed 5–5–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045, FRL–7657–2]

RIN 2060–AK53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: On February 18, 2003, the EPA promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. The technical corrections in the final rule correct several cross-references in order to be consistent with the text shifts made in the February 18, 2003 amendments.

DATES: *Effective Date:* The technical corrections are effective May 6, 2004.

ADDRESSES: Docket ID No. OAR–2002–0045 and Docket ID No. A–94–67, containing supporting information used in the development of the final rule, are available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading

Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, electronic mail (e-mail address *telander.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action are those kraft, soda, sulfite, and stand-alone semichemical pulp mills with chemical recovery processes that involve the combustion of spent pulping liquor. Categories and entities potentially regulated by this action include:

Category	NAICS code *	Examples of regulated entities
Industry	32211 32212 32213	Kraft, soda, sulfite, and stand-alone semichemical pulp mills.
Federal government		Not affected.
State/local/tribal government		Not affected.

* North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.860 of the national emission standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document. *Docket.* The EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0045 and Docket ID No. A–94–67. The official public docket consists of the documents specifically referenced in the final rule, any public comments received, and other information related to the final rule. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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/*. You may also access a copy of the final rule incorporating the provisions of the **Federal Register** notice through the Technology Transfer Network (TTN) at *http://www.epa.gov/ttn/atw/pulp/pulppg.html*. 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.

Background. On February 18, 2003, we published a direct final rule (68 FR 7706) and parallel proposal (68 FR 7735) amending the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (40 CFR part 63, subpart MM). The amendments clarified and consolidated the monitoring and testing requirements and added a site-specific alternative standard for one pulp mill. The consolidation of the monitoring and testing requirements resulted in significant text shifts within and between the monitoring and testing sections.

The technical corrections in the final rule correct the following cross-references in order to be consistent with the text shifts made in the February 18, 2003 amendments:

- The reference in § 63.866(a)(1) to the procedures in § 63.864(b)(2) for establishing operating ranges is corrected to refer to the procedures in § 63.864(j);
- The references in §§ 63.866(b) and 63.867(c) to the ongoing compliance provisions in § 63.864(c),(c)(1) and (2) are revised to refer to the provisions in § 63.864(k), (k)(1) and (2), respectively;
- The reference in § 63.866(c)(4) to the compliance determinations made under § 63.865(a) through (e) is corrected to refer to the compliance determinations made under § 63.865(a) through (d); and
- The references in the General Provisions table (under §§ 63.7(a)(1) and 63.7(h)) to the performance test exemption in § 63.864(a)(6) are corrected to refer to the exemption in § 63.865(c)(1).

Section 553(d) of 5 U.S.C. allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's final rule simply corrects cross-references in order to be consistent with text shifts made in the February 18, 2003 amendments, does not add any requirements necessitating additional time for compliance, and otherwise does not substantively change the requirements of the final rule or otherwise affect sources' ability to comply with the final rule or any compliance obligation a source may have, we find good cause to make the final rule effective immediately.

Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements

under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action 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 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA is not proposing/adopting any voluntary consensus standards in this action.

This action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these technical corrections, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of these technical corrections in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. These technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 6, 2004. The EPA will submit a report containing the 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).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 28, 2004.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

■ 2. Section 63.866 is amended by revising paragraphs (a)(1) introductory text, (b), and (c)(4) to read as follows:

§ 63.866 Recordkeeping requirements.

(a) * * *

(1) Procedures for responding to any process parameter level that is inconsistent with the level(s) established under § 63.864(j), including the procedures in paragraphs (a)(1)(i) and (ii) of this section:

* * * * *

(b) The owner or operator of an affected source or process unit must maintain records of any occurrence when corrective action is required under § 63.864(k)(1), and when a violation is noted under § 63.864(k)(2).

* * * * *

(c) * * *

(4) Records and documentation of supporting calculations for compliance determinations made under §§ 63.865(a) through (d);

* * * * *

■ 3. Section 63.867 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.867 Reporting requirements.

* * * * *

(c) *Excess emissions report.* The owner or operator must report quarterly if measured parameters meet any of the conditions specified in paragraph (k)(1) or (2) of § 63.864. This report must contain the information specified in § 63.10(c) of this part as well as the number and duration of occurrences when the source met or exceeded the conditions in § 63.864(k)(1), and the number and duration of occurrences when the source met or exceeded the conditions in § 63.864(k)(2). Reporting excess emissions below the violation thresholds of § 63.864(k) does not constitute a violation of the applicable standard.

* * * * *

■ 4. Table 1 to Subpart MM is amended by revising the entries for §§ 63.7(a)(1) and 63.7(h) to read as follows:

TABLE 1 TO SUBPART MM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM

General Provisions reference	Summary of requirements	Applies to subpart MM	Explanation
* *	* *	*	* *
63.7(a)(1)	Performance testing requirements—applicability.	Yes	§ 63.865(c)(1) specifies the only exemption from performance testing allowed under subpart MM.
* *	* *	*	* *
63.7(h)	Waiver of performance tests	Yes	§ 63.865(c)(1) specifies the only exemption from performance testing allowed under subpart MM.
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[FR Doc. 04–10343 Filed 5–5–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 439

Pharmaceutical Manufacturing Point Source Category

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 425 to 699, revised as of July 1, 2003, the duplicated text from pages 401 and 408 is removed and the following text is reinstated.

Text to be reinstated on page 401:

* * * * *

Appendix A to Part 439—Tables

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

Source: 48 FR 49821, Oct. 27, 1983, unless otherwise noted.

General

§ 439.0 Applicability.

(a) This part applies to process wastewater discharges resulting from the research and manufacture of pharmaceutical products, which are generally, but not exclusively, reported under SIC 2833, SIC 2834 and SIC 2836 (1987 Standard Industrial Classification Manual).

(b) Although not reported under SIC 2833, SIC 2834 and SIC 2836, discharges from the manufacture of other pharmaceutical products to which this part applies include (but are not limited to):

(1) Products manufactured by one or more of the four types of manufacturing processes described in subcategories A, B, C or D of this part, and considered by the Food and Drug Administration to be pharmaceutical active ingredients;

(2) Multiple end-use products (e.g., components of formulations, chemical intermediates, or final products) derived from pharmaceutical manufacturing operations and intended for use primarily in pharmaceutical applications;

(3) Pharmaceutical products and intermediates not subject to other categorical limitations and standards, provided the manufacturing processes generate process wastewaters that are similar to those derived from the manufacture of pharmaceutical products elsewhere (an example of such a product is citric acid);

(4) Cosmetic preparations that are reported under SIC 2844 and contain pharmaceutical active ingredients, or active ingredients that are intended for the treatment of a skin condition. (These preparations do not include products such as lipsticks or perfumes that serve to enhance appearance, or provide a pleasing odor, but do not enhance skin care. Also excluded are deodorants, manicure preparations, shaving preparations and non-medicated shampoos that do not function primarily as a skin treatment.)

(c) The provisions of this part do not apply to wastewater discharges resulting from the manufacture of the following products, or as a result of providing one or more of the following services:

(1) Surgical and medical instruments and apparatus reported under SIC 3841;

(2) Orthopedic, prosthetic, and surgical appliances and supplies reported under SIC 3842;

(3) Dental equipment and supplies reported under SIC 3843;

(4) Medical laboratory services reported under SIC 8071;

(5) Dental laboratory services reported under SIC 8072;

(6) Outpatient care facility services reported under SIC 8081;

(7) Health and allied services reported under SIC 8091, and not classified elsewhere;

(8) Diagnostic devices other than those reported under SIC 3841;

(9) Animal feed products that include pharmaceutical active ingredients such as vitamins and antibiotics, where the major portion of the product is non-pharmaceutical, and the resulting process wastewater is not characteristic of process wastewater from the manufacture of pharmaceutical products;

(10) Food and beverage products fortified with vitamins or other pharmaceutical active ingredients, where the major portion of the product is non-pharmaceutical, and the resulting process wastewater is not characteristic of process wastewater from the manufacture of pharmaceutical products;

(11) Pharmaceutical products and intermediates subject to the provisions of 40 CFR part 414, provided their manufacture results in less than 50 percent of the total flow of process wastewater that is regulated by 40 CFR part 414 at the facility.

[63 FR 50424, Sept. 21, 1998]

§ 439.1 General definitions.

As used in this part:

(a) The general definitions, abbreviations and methods of analysis in 40 CFR part 401 shall apply.

* * * * *

Text to be reinstated on page 408:

* * * * *

standards specified in §§ 439.23 and 439.24.

[68 FR 12273, Mar. 13, 2003]

§ 439.26 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart must achieve the

following standards by September 21, 2001:

PRETREATMENT STANDARDS (PSES)

Regulated parameter	Maximum daily [1]	Maximum monthly average [1]
Acetone	20.7	8.2
n-Amyl acetate	20.7	8.2
Ethyl acetate	20.7	8.2
Isopropyl acetate	20.7	8.2
Methylene chloride	3.0	0.7

[1] mg/L (ppm).

[68 FR 12273, Mar. 13, 2003]

§ 439.27 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the following pretreatment standards:

Regulated parameter	Pretreatment standards [1]	
	Maximum daily discharge	Average monthly discharge must not exceed
1 Acetone	20.7	8.2
2 n-Amyl acetate	20.7	8.2
3 Ethyl acetate	20.7	8.2
4 Isopropyl acetate	20.7	8.2
5 Methylene chloride	3.0	0.7

[1] Mg/L (ppm).

[63 FR 50431, Sept. 21, 1998; 64 FR 48104, Sept. 2, 1999]

Subpart C—Chemical Synthesis Products

§ 439.30 Applicability.

This subpart applies to discharges of process wastewater resulting from the manufacture of pharmaceutical products by chemical synthesis.

[63 FR 50431, Sept. 21, 1998]

§ 439.31 Special definitions.

For the purpose of this subpart:

(a) *Chemical synthesis* means using one or a series of chemical reactions in the manufacturing process of a specified product.

(b) *Product* means any pharmaceutical product manufactured by chemical synthesis.

[68 FR 12273, Mar. 13, 2003]

§ 439.32 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT:

(a) The limitation for BOD_5 is the same as specified in § 439.12(a).

(b) The limitation for TSS is the same as specified in § 439.12(b).

(c) The limitations for COD are the same as specified in § 439.12(c) and (d).

(d) The limitations for cyanide are the same as specified in § 439.12(e), (f) and (g).

[63 FR 50431, Sept. 21, 1998, as amended at 68 FR 12273, Mar. 13, 2003]

§ 439.33 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BCT: Limitations for BOD5, TSS and pH are the same as the corresponding limitations in § 439.32.

[63 FR 50432, Sept. 21, 1998]

§ 439.34 Effluent limitations attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BAT:

(a) The limitations are the same as specified in § 439.14(a).

(b) The limitations for COD are the same as specified in § 439.12(c) and (d).

* * * * *

[FR Doc. 04–55508 Filed 5–5–04; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54, 61, and 69

[CC Docket Nos. 00–256 and 96–45; FCC 04–31]

Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this document, the Commission takes additional steps to provide rate-of-return carriers greater flexibility to respond to changing marketplace conditions. In particular, the Commission modifies the "all-or-nothing" rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation without requiring a waiver of the all-or-nothing rule. In this way, the Commission reduces the administrative costs and uncertainties of such acquisitions for rate-of-return carriers. The Commission also grants rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. With this additional pricing flexibility, rate-of-return carriers will be able to set more economically efficient rates and respond to competitive entry. Finally, the Commission merges Long Term Support with Interstate Common Line Support. This will make the Commission's universal service mechanisms simpler and more transparent, while ensuring that rate-of-return carriers maintain existing levels of universal service support.

DATES: Effective June 7, 2004; except for § 61.38(b)(4), §§ 61.41(c), (d), and (e), and § 69.123(a)(1), (a)(2), (c), and (d), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein must be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Wireline Competition Bureau, Pricing Policy Division, 202–418–1572, or Ted Burmeister, Wireline Competition Bureau, Telecommunications Access Policy Division, 202–418–7389.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in CC Docket Nos. 00–256 and 96–45, adopted on February 12, 2004, and released on February 26,

2004, and the Errata, adopted and released on April 14, 2004. The complete text of these Orders are available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the Order may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *qualexint@aol.com*.

Synopsis of Report and Order and Errata

1. The Commission takes additional steps to provide rate-of-return carriers greater flexibility to respond to changing marketplace conditions in response to comment sought in *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00–256, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00–256, Fifteenth Report and Order in CC Docket No. 96–45, and Report and Order in CC Docket Nos. 98–77 and 98–166, 66 FR 59719 (Nov. 30, 2001). In particular, the Commission modifies the all-or-nothing rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation. In this way, the Commission reduces the administrative costs and uncertainties of such acquisitions for rate-of-return carriers. The Commission also grants rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. With this additional pricing flexibility, rate-of-return carriers will be able to set more economically efficient rates and respond to competitive entry. Finally, the Commission merges Long Term Support (LTS) with Interstate Common Line Support (ICLS). This will make the Commission's universal service mechanisms simpler and more transparent, while ensuring that rate-of-return carriers maintain existing levels of universal service support.

All-or-Nothing Rule

2. Section 61.41 of the Commission's rules, 47 CFR 61.41, provides that if a price cap carrier is in a merger, acquisition, or similar transaction, it must continue to operate under price cap regulation after the transaction. In addition, when rate-of-return and price cap carriers merge or acquire one another, the rate-of-return carrier must convert to price cap regulation within one year. Furthermore, if an individual rate-of-return carrier or study area converts to price cap regulation, all of its affiliates or study areas must also convert to price cap regulation, except for its average schedule affiliates. Finally, LECs that become subject to price cap regulation are not permitted to withdraw from such regulation or participate in NECA tariffs. These regulatory requirements collectively are referred to as the all-or-nothing rule.

3. The Commission modifies the all-or-nothing rule to permit a limited exception when a rate-of-return carrier acquires lines from a price cap carrier and elects to bring the acquired lines into rate-of-return regulation. The rule, as amended, will permit the acquiring carrier to convert the price cap lines back to rate-of-return regulation. The Commission defers further action on the all-or-nothing rule until it has reviewed the record compiled in response to the Second Further Notice that we also issue today.

4. The Commission adopted the all-or-nothing rule in order to avoid two specific problems that it envisioned. First, the Commission sought to prevent a carrier from shifting costs from its price cap affiliate to its rate-of-return affiliate, recovering those costs through the higher, cost-based rates of the non-price cap affiliate and increasing the profits of the price cap affiliate because of its reduced costs. Second, the Commission intended to prevent carriers from gaming the system by switching back and forth between the two different regulatory regimes. At a minimum, the record currently supports reform of the all-or-nothing rule when a rate-of-return carrier acquires price cap lines but intends to operate all of its lines, including the newly acquired price cap lines, under rate-of-return regulation.

5. When a rate-of-return carrier seeks to return acquired price cap lines to rate-of-return regulation, the problems that the all-or-nothing rule sought to prevent do not exist, or can be addressed in a less burdensome way. Because the carrier wishes to have all of its lines be subject to rate-of-return regulation, there can be no danger of cost shifting between price cap and non-price cap affiliates. Similarly, a rate-of-return carrier in this position is not necessarily seeking to game the system by moving back and forth between different regulatory regimes. However, recognizing the possibility that the acquiring rate-of-return carrier could later seek to return to price cap regulation, thereby potentially gaming the system, the Commission concludes that once a rate-of-return carrier brings acquired price cap lines into rate-of-return regulation, it may not for five years elect price cap regulation for itself, or by any means cause the acquired lines to become subject to price cap regulation, without first obtaining a waiver. The Commission believes that this restriction responds to the concerns underlying the adoption of the all-or-nothing rule, while not requiring that the election be unnecessarily irreversible. The Commission does not restrict the number of lines that may be acquired by a rate-of-return carrier and returned to rate-of-return regulation because the risks of abuse are very small and the administrative benefits are significant.

6. The Commission notes that the carriers involved in a merger or acquisition must coordinate to ensure that, as of the effective date of the transaction, their respective tariffs reflect the services being offered after the merger or acquisition. The Commission also notes that price cap carriers are required to adjust their price cap indices to reflect the removal of the transferred access lines.

Pricing Flexibility

Geographic Deaveraging of Transport and Special Access Services

7. The Commission amends § 69.123 of the Commission's rules to permit rate-of-return carriers immediately to deaverage geographically their rates for transport and special access services. The Commission will permit rate-of-return carriers to define both the scope and number of zones, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of its revenues from those services in the study area. The Commission will require, however, that the zones established for transport and special access deaveraging are consistent with any unbundled network element (UNE) zones adopted pursuant to the requirements of section 251 and will require rate-of-return carriers to demonstrate that rates reflect cost characteristics associated with the selected zones. Granting rate-of-return carriers more flexibility to deaverage

these rates enhances the efficiency of the market for those services by allowing prices to be tailored more easily and accurately to reflect costs and, therefore, facilitates competition in both higher and lower cost areas.

8. The Commission's action here represents a measured modification of the current rule. That rule permitted rate-of-return carriers to deaverage these rates when a single entrant has established a cross-connect in one central office in the rate-of-return carrier's study area. Thus, rather than filing deaveraged rates only when a competitor has entered the market via collocation, the rate-of-return carrier may now, immediately upon the effective date of this order, file deaveraged rates that may become effective in fifteen days. The greater flexibility afforded by the ability to deaverage transport and special access rates will benefit access customers through more efficient pricing of access services.

9. The Commission is not persuaded that geographic deaveraging will lead to unreasonable, monopolistic rates in areas not served by a competitor. Thus, deaveraging of transport and special access rates should not permit rate-of-return carriers to erect barriers to entry. Any deaveraged rates will be subject to the tariff review and complaint processes. Continuing to require averaged rates could result in preclusion or uneconomic entry. The Commission has observed that averaging across large geographic areas distorts the operation of markets in high-cost areas because it requires incumbent LECs to offer services in those areas at prices substantially lower than their costs of providing those services. Prices that are below cost reduce the incentives for entry by firms that could provide the services as efficiently, or more efficiently, than the incumbent LEC. Similarly, discrepancies between price and cost may create incentives for carriers to enter low-cost areas even if their cost of providing service is actually higher than that of the incumbent LEC.

10. The Commission simplifies its rules by allowing the rate-of-return carrier to establish its own zones. The Commission concludes that granting rate-of-return carriers the flexibility to choose the number of zones and the criteria for establishing zone boundaries is more likely to result in reasonable and efficient pricing zones than if their flexibility is more constrained. Therefore, the Commission eliminates all competitive prerequisites for the deaveraging of transport and special access rates and permits rate-of-return carriers to define pricing zones as they wish, so long as each zone, except the highest-cost zone, accounts for at least 15 percent of the rate-of-return carrier's transport and special access revenues in the study area. This ensures that any lower rates resulting from deaveraging are enjoyed by a range of customers, rather than being focused on only a few customers in a way that might evade the Commission's prohibition on contract pricing by rate-of-return carriers for individual customers.

11. The permissive geographic deaveraging the Commission discusses here applies to rates for all services in the transport and special access categories to which density zone pricing currently applies. The Commission requires that the same zones be used for all transport and special access elements. The Commission retains the constraints on annual price increases within zones that are contained in § 69.123(e)(1) of the Commission's rules. Although such constraints limit rate-of-return carriers' ability immediately to rebalance rates in a manner that reflects the actual costs of providing the services at issue, the Commission remains concerned with preventing the disruptive effects of rapid and unexpected price increases. The Commission also retains the requirement that transport and special access services offered between telephone company locations be priced at the rates for the higher zone.

12. The Commission is not persuaded that greater geographic deaveraging flexibility will lead to predatory pricing by incumbent LECs, or by arguments that any further deaveraging should result only in price decreases, *i.e.*, that it be "downward only." The Commission will no longer require rate-of-return carriers to file zone pricing plans in advance of tariff filings. Parties wishing to challenge the reasonableness of rate-of-return carrier zones may do so as part of the tariff review process, or in a formal complaint under section 208 of the Act.

13. Under the present rules governing geographic deaveraging, rate-of-return carriers may not deaverage transport or special access rates until at least one cross-connect is operational in the study area. Thus, a rate-of-return carrier today would have to have established a cross-connect charge before it could offer the allowed services at deaveraged rates. The cross-connect subelement recovers costs associated with the cross-connect cable and associated facilities connecting the equipment owned by or dedicated to the use of the interconnector with the telephone company's equipment and facilities used to provide interstate special or switched access services. The Commission concludes that a rate-of-return carrier wishing to geographically deaverage transport or special access rates must establish a cross-connect element providing for interconnection and may not charge collocated providers for entrance facilities or channel terminations when the entrant provides its own transmission facilities. This merely brings forward the requirement that would apply today if a rate-of-return carrier qualified and elected to geographically deaverage rates. A rate-of-return carrier that could assess such a charge for the combined facilities would clearly still possess some degree of market power, and would be attempting to use that power in an anticompetitive manner. Finally, the requirement that rate-of-return carriers must tariff a cross-connect element in order to geographically deaverage rates ensures that transport competitors can interconnect with the rate-of-return carrier's access network, whether or not rate-of-return carriers claim exemption under either section 251(f)(1) or (f)(2). Thus, competition will not be foreclosed if a carrier claims its exemption.

Volume and Term Discounts for Transport Services

14. Under the current rules, rate-of-return carriers are permitted to offer volume and term discounts for special access services. After a certain number of DS1 equivalent cross-connects are operational in the study area, they may offer such discounts for transport services. After reviewing the record, the Commission concludes that no relaxation of the requirements for offering volume and term discounts for transport services is warranted at the present time. The Commission retains the existing cross-connect-based standards as the trigger for when a rate-of-return carrier may offer volume and term discounts for transport services, rather than adopting any alternative suggested in the record. To date, no party has taken advantage of the existing ability to offer volume and term discounts for transport services—whether this is because they cannot meet the threshold, or for some other reason, is not apparent from the record before us.

15. The record indicates that there is limited competition in rate-of-return carrier service areas that would serve to discipline the provision of volume and term discounted transport services offered by rate-of-return carriers. The Commission agrees with those parties that argue that wireless generally is not a substitute for transport, and thus

wireless competition is unlikely to restrain rate-of-return carrier pricing of transport services.

16. The Commission is also skeptical that cable and satellite providers offer competition to transport services of rate-of-return carriers. These competitors largely bypass the rate-of-return carriers' switched access networks and thus do not restrain transport prices. To the extent that cable may, in certain instances, provide dedicated transmission offerings that bypass the rate-of-return carrier network, rate-of-return carriers today are allowed to offer volume and term discounts for special access services, which would be the service with which the entrant would be competing. Thus, the competition faced by rate-of-return carriers for transport services is limited and is significantly less than that in price cap carrier service areas.

17. The Commission concludes that further volume and term discount pricing flexibility for transport services should be available only if there is evidence of significant competition. Volume and term discount pricing flexibility must be structured to prevent exclusionary pricing behavior to safeguard the development of competition in rate-of-return carrier service areas.

18. The Commission finds that the various alternative triggers suggested in the record fail to address the concern with a rate-of-return carrier's ability to erect barriers to entry and engage in price discrimination. While the market opening events that commenters identify would facilitate the development of competition, they do not, in and of themselves, indicate that any particular level of competition exists. Therefore, there would be no assurance that rate-of-return carriers could not erect barriers to entry, or engage in unreasonable price discrimination. On the other hand, competition can develop without an entrant with eligible telecommunications carrier (ETC) status being present because significant competition could exist in part of a rate-of-return carrier's service area before an entrant sought ETC status. The argument that UNEs should be available throughout the service area before pricing flexibility should be granted also fails to address the level of competition that might exist because an entrant might enter without using UNEs. The Commission also declines to adopt an approach modeled on that for price cap carriers because the Commission believes that the diversity among rate-of-return carriers and the markets they serve make those triggers an unreliable predictor of the competitive effects in any of the rate-of-return carriers' markets. The Commission believes that the actual competition reflected in a cross-connect standard is a better judge of when volume and term discounts for transport services are appropriate because it indicates that the rate-of-return carrier is facing actual competition for those services. It is also administratively easy to administer.

19. The Commission declines to condition additional pricing flexibility on rate-of-return carriers being required to establish a ceiling rate for the associated non-discounted access service offering. The Commission also retains the study area as the basis to measure competitiveness in determining whether pricing flexibility is warranted for rate-of-return carriers.

20. In addition, the Commission declines to limit the length of any term contract to three years. Finally, the Commission concludes that the record is inadequate to permit it to reach any conclusions regarding Phase II pricing flexibility, non-dominant treatment of any services, or shortened filing periods for some services.

Contract Carriage

21. Under the current rules, rate-of-return carriers are prohibited from offering interstate access services pursuant to individual customer contracts. After reviewing the record in this proceeding, the Commission declines to permit rate-of-return carriers to offer contract carriage at this time. Contract carriage would permit a rate-of-return carrier to combine various elements, or parts of elements, in presenting an offering to a customer. This would present rate-of-return carriers with an opportunity to set non-cost-based prices in order to prevent entrants from providing service to the largest customers in their service areas, thereby precluding further competition for smaller customers in their service areas as well. The principal check on rate-of-return carrier rates is the authorized rate of return the Commission has prescribed. A rate-of-return carrier is permitted to set rates that provide the opportunity to earn this return on the entire portion of their rate base that is assigned to interstate access services. Therefore, any predation on the part of a rate-of-return carrier in its contract offerings could be recovered through higher rates for other customers, absent some check on the rate-of-return carrier's ability to accomplish this result. Because any predatory pricing would restrict entry, there would likely be no competitor to provide an alternative to those customers to whom the rate-of-return carrier was charging higher rates. Rate-of-return carriers have not demonstrated in the record how such behavior can be detected and prevented within the rate-of-return regulatory process. The pooling process would make detection even more difficult. The immediate geographic deaveraging of transport and special access services the Commission extends to rate-of-return carriers, along with the volume and term pricing already available to rate-of-return carriers, provide them with meaningful ways to respond to competition. Therefore, balancing the risks of undetectable anticompetitive behavior against the limited competition that presently exists in rate-of-return carrier service areas that could be considered a substitute for access services, the commission believes the better course is the conservative one of precluding contract carriage for rate-of-return carriers.

Other Issues

22. The Commission finds that the pricing flexibility permitted by this order can be accommodated within the pool by modifying its settlement and rate-setting mechanisms so they apply on a more targeted basis to narrower groups of customers. The Commission's current rules would permit such pooling to occur. Many of the rate-of-return carriers most likely to exercise this option—ALLTEL, CenturyTel, ACS of Anchorage, TDS—already file their own traffic-sensitive access tariffs for some or all of their study areas. Therefore, by this decision, smaller rate-of-return carriers may be able to offer pricing flexibility through the NECA traffic-sensitive pool that they would not be able to do if required to do so through their own tariffs. The tariffing costs will increase some for those carriers that elect to offer pricing flexibility, whether done on their own or through NECA. The increased administrative burdens on NECA will likely be less than those that would result if the Commission were to require rate-of-return carriers to file their own tariffs proposing flexible pricing arrangements.

23. The Commission declines to require rate-of-return carriers to leave the NECA pool and file their own tariffs in order to offer pricing flexibility. The Commission is not persuaded that pooling is inconsistent with pricing flexibility. While pooling involves a degree of averaging and risk sharing that would not exist if carriers filed their own tariffs, this is the case whether pricing flexibility is involved or not. Rate-of-return carriers subject to section 61.38 of the Commission's rules must

file cost support with their tariffs, and those subject to section 61.39 must be prepared to submit cost support upon request. This supporting material will include a clear delineation of the geographically deaveraged pricing zones. It will also describe the process used to establish rates, whether on an individual carrier basis or through the use of some aggregation approach, such as the banding NECA currently uses for some rate elements, along with the actual cost support for the services for which pricing flexibility is being offered. While the cost support may not include individual carrier cost data, the NECA tariff filings offering pricing flexibility will include supporting material associated with the rates in question that the Commission and interested parties may utilize to detect efforts to erect barriers to entry or to establish discriminatory pricing practices. This is also consistent with allowing rate-of-return carriers to offer deaveraged SLCs within the NECA common line pool, as the Commission did in the *MAG Order*. Parties wishing to challenge the reasonableness of NECA's pool rates or rate development procedures may do so as part of the tariff review process, or in a formal complaint under section 208 of the Act.

24. The Commission declines to adopt other proposed limits. It does not restrict the availability of pricing flexibility with respect to transport elements that cannot be avoided because of network design configuration. The Commission also declines to revise the standard applicable to volume and term discounts for channel terminations. Finally, the Commission will not limit the availability of pricing flexibility to rate-of-return carriers participating in an incentive regulation plan.

Consolidation of Long Term Support and Interstate Common Line Support

25. The Commission merges LTS into the ICLS mechanism. First, merging LTS into ICLS promotes administrative simplicity. LTS and ICLS duplicatively provide support directed to the rate-of-return carriers' interstate common line costs. ICLS is narrowly tailored to individual carriers' support requirements under the current interstate access rate structure, acting as the residual source of revenue for rate-of-return carriers and ensuring that they can recover their common line revenue requirements while providing service at an affordable rate. LTS, on the other hand, normally provides each carrier with a fixed level of support grown annually by inflation and may bear little relevance to a particular carrier's support requirements. In most cases, LTS will not be sufficient to ensure that a carrier will recover its common line revenue requirement under the current rate structure. Although LTS effectively served the purposes it was designed to serve, it was not designed to meet the requirements of the rate-of-return access charge rate structure in place after the *MAG Order*. Eliminating LTS will make the interstate access rate structure and universal service mechanisms simpler and more transparent.

26. The Commission's elimination of the Carrier Common Line (CCL) charge obviates LTS's primary historical purpose. Having outlived its primary purpose as of July 1, 2003, when the CCL charge was completely phased out, the Commission concludes that LTS should be discontinued in the interest of administrative simplicity.

27. LTS's secondary role as an incentive for continued participation in the NECA common line pool also is no longer a valid reason to maintain LTS as a discrete support mechanism. LTS is only available to carriers that participate in the common line pool. Removing LTS as an artificial incentive for pool participation will give each carrier the freedom to choose to set rates outside of the NECA pool without sacrificing the universal service support that ensures affordable service for its customers. The Commission recognizes that NECA has made great strides in providing common line pool participants with increased flexibility in setting individual end user rates and that it anticipates further innovation in this respect. Carriers will undoubtedly regard such flexibility as a tremendous value in making their determinations whether to continue participating in the pool. Nonetheless, the Commission finds that each individual carrier is in the best position to decide whether pool participation promotes its particular best interests. The Commission concludes that the decision whether to participate in the pool should be left to each individual carrier based on the pool's inherent administrative benefits for that carrier without additional regulatory inducements.

28. We do not believe that eliminating LTS as an incentive for pool membership will risk or undermine the important benefits for carriers that elect to remain in the NECA common line pool. The Commission recognizes the continued benefits of pooling identified by NECA and other commenters, including the reduction of administrative burdens associated with tariff-filing and protection against the effects of short-term revenue fluctuations. The Commission anticipates that many, if not most, carriers will continue participating in the common line pool because of such benefits. In this regard, the Commission notes that the NECA traffic-sensitive pool remains viable despite no comparable regulatory incentive for participation. Based on examination of the record, however, the Commission cannot conclude that the benefits of pooling warrant continued use of universal service support to induce carriers to participate in the pool if they are not otherwise inclined to do so.

29. The regulatory concerns which justified the use of LTS to induce pool participation no longer hold. In the past, a non-pooling carrier might not recover its common line revenue requirement if it underprojected its costs or overprojected its demand in developing its access charge tariffs. The NECA common line pool spread that risk among all carriers, reducing the likelihood that any one carrier would suffer a major shortfall in revenue. Eliminating the CCL charge renders irrelevant this primary risk-pooling benefit of the common line pool. While the pool formerly ensured that an individual carrier would not suffer if CCL charge revenues were insufficient to recover its common line revenue requirements, the ICLS mechanism now ensures that no individual carrier will fail to recover its common line revenue requirement.

30. In order to effectuate this decision, the Commission amends its rules to provide that LTS shall not be provided to any carrier beginning July 1, 2004. Overall support will not be reduced because the Commission's existing rules will operate to automatically increase ICLS by an amount to match any LTS reduction. For that reason, no further action by the Commission is necessary to implement the merger of LTS into ICLS.

Procedural Matters

Paperwork Reduction Act Analysis

31. The *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements contained in § 61.38(b)(4), §§ 61.41(c), (d), and (e), and § 69.123(a)(1), (a)(2), (c), and (d) will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

Final Regulatory Flexibility Act Analysis

32. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *MAG Further Notice*. The Commission sought written public comment on the proposals in the *MAG Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended. To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to the Commission's rules or statements made in the preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

Need for, and Objectives of, the Rules

33. In this Order, the Commission modifies its interstate access charge and universal service rules for LECs subject to rate-of-return regulation. The Order carefully considers the needs of small and mid-sized local telephone companies serving rural and high-cost areas, in order to help provide certainty and stability for such carriers, encourage investment in rural America, and provide important consumer benefits.

34. This Order addresses three of the issues raised in the *MAG Further Notice*. First, the Commission modifies the "all-or-nothing" rule to permit rate-of-return LECs to bring recently acquired price cap lines back to rate-of-return regulation. This will reduce the administrative burdens on small rate-of-return carriers of seeking a waiver of the all-or-nothing rule because it will permit acquired lines to be returned to rate-of-return regulation, and thereby will reduce the uncertainty associated with such acquisitions. Second, the Commission grants rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. This action increases the efficiency of the interstate access charge rate structure by moving rates towards cost. Finally, the Commission merges Long Term Support (LTS) into the ICLS mechanism. This will promote administrative simplicity by eliminating an unnecessarily duplicative support mechanism without affecting the total support received by rate-of-return carriers, and without negatively affecting carriers that choose to participate in the NECA common line pool. Because LTS, but not ICLS, is conditioned on participation in the common line pool, the merger will permit each rate-of-return carrier the freedom to choose whether to set its own rates without sacrificing universal service support.

Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

35. No comments were filed in response to the IRFA. However, certain comments filed in response to the *MAG Further Notice* included concerns that would relate to small entities. Several commenters argued that by eliminating the all-or-nothing rule, small, typically rural carriers would experience reductions in both transaction costs and uncertainty. Some commenters also argued that relaxing the rules on volume and term discounts for transport services, together with allowing carriers to offer services pursuant to customer contracts, would cause harm to small entities by foreclosing competition. Finally, commenters argued that merging LTS into ICLS would diminish the viability of the common line pool, which provides benefits to the small, rural carriers that participate in it.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

36. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. In this section, the Commission further describes and estimates the number of small entity licensees and regulatees that may also be directly affected by rules adopted in this order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the Commission discusses the total estimated numbers of small businesses that might be affected by the Commission's actions.

37. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

38. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

39. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission

estimates that most providers of incumbent local exchange service are small businesses that may be affected by the revised rules and policies.

40. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the revised rules and policies.

41. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the revised rules and policies.

42. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the revised rules and policies.

43. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the revised rules and policies.

44. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the revised rules and policies.

45. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the revised rules and policies.

46. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

47. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

48. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the

Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

49. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

50. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

51. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

52. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than $40 million in each of the three previous calendar years, or that had revenues of no more than $15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that

qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

53. *Private and Common Carrier Paging. In the Paging Third Report and Order,* the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

54. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, the Commission adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

55. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the revised rules and policies.

56. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

57. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of its evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

58. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be

small and may be affected by the revised rules and policies. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

59. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

60. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. The Commission concludes that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

61. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the revised rules and policies.

62. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the revised rules and policies. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission tentatively concludes that at least 1,932 licensees are small businesses.

63. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, the Commission concludes that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

64. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, the Commission established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. The SBA has approved these size standards. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the Commission's rules in future auctions of 218–219 MHz spectrum.

65. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category that operated for

the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

66. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

67. The Order permits rate-of-return carriers acquiring price cap lines to return those lines to rate-of-return regulation without seeking a waiver. As a result, the administrative costs of seeking a waiver are avoided.

68. The Order also permits rate-of-return carriers to deaverage geographically their rates for transport and special access services within a study area. While rate-of-return carriers must define the scope of zones, the requirement that they be approved in advance is eliminated. The carrier is now required to demonstrate that each zone, except the highest-cost zone, accounts for at least 15 percent of its revenues from services in the study area, and must demonstrate that rates reflect cost characteristics associated with the selected zones.

69. Merging LTS into ICLS will promote administrative simplicity by eliminating a duplicative support mechanism without affecting the amount of universal service support received by small entities or negatively affecting carriers that choose to participate in the NECA common line pool.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

70. The Commission has sought to minimize significant economic impacts on small entities, including small telephone companies, in revising the access and universal service rules in the Order. The Commission's approach is tailored to the specific challenges faced by small local telephone companies, many of which serve rural and high-cost areas.

71. The Commission considered whether to eliminate completely the "all-or-nothing" rule, but decided only to carve out an exception for rate-of-return carriers that wish to return the acquired price cap lines to rate-of-return regulation. This eliminates the need for a waiver before such acquisitions can be returned to rate-of-return regulation, thereby reducing transaction costs and uncertainty for small, typically rural carriers seeking to acquire lines from price cap carriers. The Commission continues to explore further modifications to the all-or-nothing rule within the larger context of incentive regulation for rate-of-return carriers in a *Second Further Notice.*

72. The Order permits rate-of-return carriers to geographically deaverage their rates for special access and transport services. The Commission gives rate-of-return carriers significant latitude to define pricing zones as they wish, subject to the limitation that each zone, except the highest-cost zone, must account for at least 15 percent of the rate-of-return carrier's transport and special access revenues in the study area. This requirement ensures that any lower rates resulting from deaveraging are enjoyed by a range of customers, rather than being focused on only a few customers in a way that might evade the Commission's prohibition on contract pricing by rate-of-return carriers. The Order continues to require rate-of-return carriers to have a tariffed cross-connect element in order to geographically deaverage rates, thereby ensuring that transport competitors, including small entities, can interconnect with the rate-of-return carrier's access network when it deaverages its special access and transport rates. In reaching this decision, the Commission considered and rejected claims by IXCs that immediate geographic deaveraging would lead to predatory pricing by rate-of-return carriers and that further deaveraging should result only in price decreases. The Order determines that permitting rate-of-return carriers to deaverage the rates for special access and transport services enhances the efficiency of the market for those services by allowing prices to be tailored more easily and accurately to reflect costs and, therefore, facilitates competition in both higher and lower cost areas. Rate-of-return carriers must provide cost support establishing that the deaveraged rates are cost-based, thereby ensuring that smaller, more vulnerable carriers are safeguarded from any such predatory pricing.

73. The Order also permits geographic deaveraging of rates for special access and transport services within the NECA pooling process. As a result, smaller rate-of-return carriers may be able to realize increased pricing flexibility through the NECA traffic-sensitive pool. Such increased pricing flexibility might not have been possible if they were required to file their own tariffs.

74. The Order declines to relax the existing competitive triggers for volume and term discounts for transport services, as many rate-of-return carriers urged. The Commission was concerned that the premature grant of such discount authority would permit a rate-of-return carrier to lock up large customers by offering them volume and term discounts at or below cost. Such discounts would potentially foreclose competition for smaller customers because large customers may create the inducement for potential competitors to invest in facilities which, once put into service, can be used to serve adjacent smaller customers. Accordingly, the Commission refuses to adopt less restrictive competitive triggers that would have more readily facilitated volume and term discounts, because such new triggers would not have ensured the presence of a competitor that would operate to prevent harm to smaller entities.

75. The Order also declines to permit rate-of-return carriers to offer services pursuant to individual customer contracts, as many rate-of-return carriers urged. Such an ability to combine various elements or parts of elements, the Commission notes, would allow rate-of-return carriers to set non-cost-based prices in order to prevent entrants from providing service to the largest customers in their service areas, thereby precluding further competition for smaller customers in their service areas as well.

76. The Order merges LTS into the ICLS mechanism. This will simplify the administration of common line support measures, while ensuring both that no individual carrier will fail to recover its common line revenue requirement, and that overall support will not be reduced as existing rules operate to automatically increase ICLS by an

amount to match any LTS reduction. Accordingly, the concerns of small entities over the elimination of LTS are fully addressed by the new ICLS mechanism. In reaching this conclusion, the Commission considered and rejected NECA's argument that the elimination of LTS will destabilize the NECA pool. The Order concludes that although many, if not most, carriers will continue participating in the common line pool, the benefits of pooling do not warrant the continued use of universal service support as a way to induce carriers to participate in the pool if they are not otherwise inclined to do so.

Report to Congress

77. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

78. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403, this Report and Order *is adopted*.

79. Parts 54, 61, and 69 of the Commission's rules, 47 CFR Parts 54, 61, and 69, *are amended* as set forth in the rule changes hereto, effective 30 days after their publication in the **Federal Register**, except that § 61.38(b)(4), §§ 61.41(c), (d), and (e), and § 69.123(a)(1), (a)(2), (c), and (d), which contain collections of information, are contingent upon approval by the Office of Management and Budget.

80. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 54

Communications common carriers, Telecommunications, Telephone.

47 CFR Parts 61 and 69

Communications common carriers, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54, 61, and 69 of the Code of Federal Regulations as follows:

PART 54—UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Section 54.303(a) is revised by adding a second sentence to read as follows:

§ 54.303 Long term support.

(a) * * * Beginning July 1, 2004, no carrier shall receive Long Term Support.

* * * * *

PART 61—TARIFFS

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

Authority: Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

§ 61.38 [Amended]

■ 4. Section 61.38 is amended by removing and reserving paragraph (b)(4).

■ 5. Section 61.41 is amended by revising paragraphs (c) introductory text and (d) and adding a new paragraph (e) to read as follows:

§ 61.41 Price cap requirements generally.

* * * * *

(c) Except as provided in paragraph (e) of this section, the following rules in this paragraph (c) apply to telephone companies subject to price cap regulation, as that term is defined in § 61.3(ee), which are involved in mergers, acquisitions, or similar transactions.

* * * * *

(d) Except as provided in paragraph (e) of this section, local exchange carriers that become subject to price cap regulation as that term is defined in § 61.3(ee) shall not be eligible to withdraw from such regulation.

(e) Notwithstanding the requirements of paragraphs (c) and (d) of this section, a telephone company subject to rate-of-return regulation may return lines acquired from a telephone company subject to price cap regulation to rate-of-return regulation, provided that the acquired lines will not be subject to average schedule settlements, and provided further that the telephone company subject to rate-of-return regulation may not for five years elect price cap regulation for itself, or by any means cause the acquired lines to become subject to price cap regulation.

PART 69—ACCESS CHARGES

■ 6. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 7. Section 69.123 is amended by revising paragraphs (a)(1), (c), and (d) introductory text and by removing and reserving paragraph (a)(2) to read as follows:

§ 69.123 Density pricing zones for special access and switched transport.

(a)(1) Incumbent local exchange carriers not subject to price cap regulation may establish any number of density zones within a study area that is used for purposes of jurisdictional separations, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of that carrier's special access and transport revenues within that study area, calculated pursuant to the methodology set forth in § 69.725.

* * * * *

(c) Notwithstanding § 69.3(e)(7), in study areas in which a telephone company offers a cross-connect, as described in § 69.121(a)(1), for the transmission of interstate special access traffic, telephone companies may charge rates for special access sub-elements of DS1, DS3, and such other special access services as the Commission may designate, that differ depending on the zone in which the service is offered, provided that the charges for any such service shall not be deaveraged within any such zone.

* * * * *

(d) Notwithstanding § 69.3(e)(7), in study areas in which a telephone company offers a cross-connect, as described in § 69.121(a)(1), for the transmission of interstate switched traffic, or is using collocated facilities to interconnect with telephone company interstate switched transport services, telephone companies may charge rates for sub-elements of direct-trunked transport, tandem-switched transport, entrance facilities, and dedicated signaling transport that differ depending on the zone in which the service is offered, provided that the charge for any

such service shall not be deaveraged within any such zone.

* * * * *

[FR Doc. 04–10334 Filed 5–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

24 GHz Service; Licensing and Operation

CFR Correction

In Title 47 of the Code of Federal Regulations, Part 80 to End, revised as of October 1, 2003, in § 101.509, in the first sentence of paragraph (e), "–14 dBW/m^2" is corrected to read "–114 dBW/m^2".

[FR Doc. 04–55507 Filed 5–5–04; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 69, No. 88
Thursday, May 6, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 02–070–1]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations to add the fluorescence polarization assay to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. We believe this proposed action is warranted because the fluorescence polarization assay has been shown to provide an efficient, accurate, automated, and cost-effective means of determining the brucellosis status of test eligible cattle, bison, and swine. Adding the fluorescence polarization assay to the list of official tests for brucellosis in cattle, bison, and swine would help to prevent the spread of brucellosis by making available an additional tool for its diagnosis in those animals.

DATES: We will consider all comments that we receive on or before June 21, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 02–070–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–070–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–070–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Gertonson, National Center for Animal Health Programs, VS, APHIS, 2150 Centre Avenue, Bldg. B, MSC 3E20, Fort Collins, CO 80526–8117; (970) 494–7363.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*. In its principal animal hosts—cattle, bison, and swine—brucellosis is characterized by abortion and impaired fertility. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Brucellosis has been seen as a serious threat to U.S. agriculture for decades. Prior to 1934, when the Cooperative State/Federal Brucellosis Eradication Program (the program) began work to eliminate the disease from the country, brucellosis control was limited mainly to individual herds. The program relies heavily on the cooperation of livestock producers and States; in order for States to achieve brucellosis Class Free status, none of their cattle or bison can be found infected for a minimum of 12 consecutive months under an active surveillance program. Currently, 48 States, plus Puerto Rico and the U.S. Virgin Islands, hold Class Free status. Two States have a herd infection rate of less than 0.25 percent and hold Class A status. There are no States in Class B status (herd infection rates between 0.25 percent and 1.5 percent) or in Class C (herd infection rates greater than 1.5 percent). We expect the program to achieve the goal of nationwide eradication of brucellosis from livestock in the near future.

In order to achieve this goal, surveillance must include the use of accurate and efficient official brucellosis tests. Official brucellosis tests are used to determine the brucellosis disease status of cattle, bison, and swine. The regulations provide that certain cattle, bison, and swine must, among other requirements, test negative to an official brucellosis test prior to interstate movement. Official brucellosis tests are also used to determine eligibility for indemnity payment for animals destroyed because of brucellosis. In § 78.1 of the regulations, the definition of *official test* lists those tests that have been designated as official tests for determining the brucellosis disease status of cattle, bison, and swine.

The Animal and Plant Health Inspection Service (APHIS) has determined that a rapid diagnostic detection test that uses fluorescence polarization technology will be highly useful in detecting the presence of *Brucella* antibodies, and we are proposing to add this test as an official test. The test, known as the fluorescence polarization assay (referred to below as the FP assay), provides a cost-effective, accurate, quick, and simple-to-perform (both in the laboratory and in the field) means of determining the brucellosis status of test eligible cattle, bison, and swine. In trials summarized in four scientific publications, the FP assay has proven to be faster and at least as accurate as other official tests used for diagnosis of brucellosis in cattle, bison, and swine.

Like other brucellosis tests, the purpose of the FP assay is to determine if the animal in question is infected with the *Brucella* bacterium. Brucellosis infection is confirmed by the presence of antibodies to that bacterium in serum collected from the animal. Specifically, the FP assay determines any potential

brucellosis antigen-antibody reaction by measuring changes in the polarization of fluorescent-labeled molecules. Very few molecules are fluorophores (naturally fluorescent). In order to make a non-fluorescent molecule fluorescent, a fluorophore must be attached to it; the resulting fluorescent molecule is called a "tracer."

To conduct the FP assay, a technician adds a sample of animal serum to a test tube. The technician then mixes the test antigen—in this case, *Brucella* bacteria—with fluorophores to create fluorescent *Brucella* antigen tracers that he or she adds to the tube containing the animal serum at a predetermined ratio so that virtually all of the tracer molecules are bound to *Brucella* antibodies, if they are present. The fluorophore tracer is easy to track in solution; its fluorescence lifetime (the time between absorbing a photon and emitting one) is on the same scale as the rotation (all molecules rotate in solution) of the molecule to which it is attached. Therefore, tracers' sizes can be continuously measured once they are added to the tube containing the serum. Since the presence of *Brucella* antibodies in the animal serum will cause *Brucella* antigen within the tracer to split from the fluorophore and attach to the antibody, tracers will decrease in size. This size decrease, therefore, indicates that the animal from which the serum sample was drawn is infected with *Brucella* bacteria, and the test results would be interpreted as positive. If the fluorophores do not decrease in size, *Brucella* antigen-antibody binding has not occurred, the test results would be interpreted as negative, and the animal from which the serum sample was drawn would be classified as such.

The FP assay has been shown to be a highly accurate assay for detection of antibodies to *Brucella abortus* in cattle and bison sera and *Brucella suis* in swine sera. A homogenous immunoassay such as the FP assay can be accomplished rapidly and does not require repetitive steps to wash away unbound reagents as other immunoassays require. The output of the test is objective because it does not require interpretation on the part of the technician running the sample. In addition, the ease and rapidity of this testing technology suggest it is highly adaptable to field application.

Research suggests that the FP performs as well as, or better than, other serologic tools commonly used to diagnose brucellosis in cattle, bison, and swine. This research demonstrates that the FP rarely mistakenly classifies uninfected animals as positive. Therefore, this test has a high degree of specificity. The research also shows that the FP rarely mistakenly classifies infected animals as negative. Therefore, this test has a high degree of sensitivity.

The FP assay has been standardized to use a consistent concentration of reagents and measurement techniques such that the test agrees between replicates of known status. The process has been commercially developed by Viral Antigens, Incorporated, and licensed by the U.S. Department of Agriculture. Furthermore, the FP technology has already been developed for numerous other applications such as detecting illicit drugs and monitoring for drugs and other macromolecules.

We are confident that the FP assay will be an accurate, cost-effective, and efficient addition to the list of official tests for determining the brucellosis status of test-eligible cattle, bison, and swine. A complete report of field testing trial and testing results for validation of the FP assay in cattle, bison, and swine is available at *http://www.aphis.usda.gov/vs/nahps/brucellosis/* or by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT.**

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are proposing to amend the brucellosis regulations to add the FP assay to the list of official tests for determining the brucellosis disease status of test-eligible cattle, bison, and swine. We believe this proposed action is warranted because the FP assay has been shown to provide an efficient, accurate, automated, and cost-effective means of determining the brucellosis status of test-eligible cattle, bison, and swine. Adding the FP assay to the list of official tests for brucellosis in cattle, bison, and swine would help to prevent the spread of brucellosis by making available an additional tool for its diagnosis in those animals.

This new test would help to prevent the spread of brucellosis by identifying infected cattle, bison, and swine. Preventing the spread of brucellosis is critical because of its potentially costly consequences for U.S. herd owners and consumers. In 1952, when brucellosis was widespread throughout the United States, annual losses from lowered milk production, aborted calves and pigs, and reduced breeding efficiency were estimated to total more than $400 million. Since then, eradication efforts have reduced annual losses due to brucellosis to less than $1 million. However, studies have shown that if eradication efforts were stopped, the cost of producing beef and milk would increase by an estimated $80 million annually in less than 10 years.

While the test would provide long-term benefits by identifying animals infected with brucellosis, herd owners with animals that are found to be positive as a result of the FP assay, or any other official test, may experience some negative consequences. Once an infected herd is identified, the infection is contained by quarantining all infected animals and limiting their movement to slaughter only, until the disease can be eliminated from the herd. Quarantines affect the current income of herd owners, and depopulation affects their future income. Depopulation costs are mitigated by the sale of affected animals and indemnity payments, but, in many cases, indemnification provides only partial compensation.

However, there is no basis to conclude that the addition of the FP assay as an official test for brucellosis will result in more positive finds in privately owned herds than another official test might indicate. Although research indicates that the FP assay can be a more accurate test, improved accuracy does not necessarily mean more positive finds; instead, the FP assay may yield fewer false positives than other tests, simply because it is more accurate.

We do not expect that adding the FP assay to the list of official tests for brucellosis would affect the market price of animals tested. Although more rapid testing may allow faster marketing, the effect on herd owners is not expected to be significant.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. We expect that the entities that would be affected by the addition of the FP assay to the list of official brucellosis tests would be herd owners, test reagent and equipment producers, livestock markets, shows, and exhibitions, and livestock buyers and sellers. It is anticipated that affected entities would be positively affected because the use of this test should provide greater assurance of the brucellosis status of the animals tested.

Affected herd owners are likely to be small in size (when judged by the U.S. Small Business Administration's (SBA) standards). This determination is based on composite data for providers of the same and similar services. The latest Census data show that, in 1997, there were 742,203 farms in the United States

primarily engaged in beef cattle ranching and farming and dairy cattle and milk production. In 1997, 98 percent of those farms had sales of less than $500,000, which is well below the SBA's small entity threshold of $750,000 for farms in that category. Similarly, in 1997, there were 46,353 U.S. farms primarily engaged in raising hogs and pigs. Of those farms, 87 percent had sales that year of less than $500,000, which is well below the SBA's small entity threshold of $750,000 for farms in that category. Additionally, in 1997, there were 10,045 farms listed under North American Industry Classification System code 11299, the classification category that includes farms primarily engaged in bison farming. The per-farm average sale for those 10,045 farms in 1997 was $105,624, which is well below the SBA's small entity threshold of $750,000 for farms in that category. Accordingly, most herd owners potentially affected by this proposed rule would be small entities.

The test would be performed at Federal/State cooperative brucellosis laboratories. Depending upon the Federal/State brucellosis cooperative agreement, APHIS may supply the reagents and equipment for performing this test. If APHIS supplies the reagents and equipment, it is anticipated that the test cost to the livestock producer would be the same as for the other brucellosis test options.

Currently, the reagents are sold in two kit sizes, 1,000 tests kit ($1.00/test) and 10,000 tests kit ($0.50/test). The costs to the laboratory to perform the test would vary depending upon the number of tests performed.

An area that may affect the livestock producer may be whether or not the test is performed by a federally accredited veterinarian at a livestock market. If the market inspecting veterinarian uses the test, the cost may vary depending upon the agreement the veterinarian has with the State to perform brucellosis testing at the market.

It is anticipated that the test reagent and equipment producers would benefit from increased sales due to increased usage of the test. With increased usage of the test, the cost of the reagents and equipment should decline over time.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 78.1, in the definition for *official test,* paragraph (a)(13) would be redesignated as paragraph (a)(14) and new paragraphs (a)(13) and (b)(5) would be added to read as follows.

§ 78.1 Definitions.

* * * * *

Official test. (a) * * *

(13) *Fluorescence polarization assay (FP assay).* An automated serologic test to determine the brucellosis status of test-eligible cattle and bison when conducted according to instructions approved by APHIS. FP assays are interpreted as either positive, negative, or suspect. If a sample reads <10 millipolarization units (mP) above the mean negative control, the sample is considered negative. If a sample reads >20 mP above the mean negative control, the sample is considered positive. Samples that read between 10 and 20 mP above the mean negative control mean should be retested using 20 microliters of sample. If the 20-microliter sample is >20 mP above the mean negative control, the sample is considered positive. If the 20-microliter sample is still in the 10 to 20 mP range above the mean negative control, the sample is considered suspect. If the 20-microliter sample is <10 mP above the mean negative control, the sample is considered negative. Cattle and bison negative to the FP assay are classified as brucellosis negative. Cattle and bison with positive FP assay results are classified as brucellosis reactors, while cattle and bison with suspect FPA results are classified as brucellosis suspects.

* * * * *

(b) * * *

(5) *Fluorescence polarization assay (FP assay).* An automated serologic test to determine the brucellosis status of test-eligible swine when conducted according to instructions approved by APHIS. FP assays are interpreted as either positive, negative, or suspect. If a sample reads <10 millipolarization units (mP) above the mean negative control, the sample is considered negative. If a sample reads >20 mP above the mean negative control, the sample is considered positive. Samples that read between 10 and 20 mP above the negative control mean must be retested using 20 microliters of sample. If the 20-microliter sample is >20 mP above the mean negative control, the sample is considered positive. If the 20-microliter sample is still in the 10 to 20 mP range above the mean negative control, the sample is considered suspect. If the 20-microliter sample is <10 mP above the mean negative control, the sample is considered negative. Swine with negative FPA results are classified as brucellosis negative. Swine with positive FP assay results are classified as brucellosis reactors, while swine with suspect FPA results are classified as brucellosis suspects.

* * * * *

Done in Washington, DC, this 29th day of April 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–10311 Filed 5–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–13]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee Meeting.

SUMMARY: This document announces a one-day session of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee (Committee). The Committee has concluded its negotiations regarding the development of a proposed rule that will change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds. Subsequent to the conclusion of the negotiations, two workgroups were established to draft the regulatory text and preamble. The Committee will be convening for a one-day session to review the draft language developed by the workgroups and to pose questions to the workgroup members regarding the draft rule.

DATES: The session will be held on Tuesday, May 18, 2004. The session will begin at approximately 8:30 a.m., and is scheduled to adjourn at approximately 6 p.m.

ADDRESSES: The one-day session will take place at the Westin Tabor Center, 1672 Lawrence Street, Denver, Colorado 80202; telephone: (303) 572–9100 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee (Committee) for the purposes of discussing and negotiating a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other IHBG program regulations that arise out of the allocation or reallocation of IHBG funds.

The IHBG program was established under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized housing assistance to Native Americans by eliminating and consolidating a number of HUD assistance programs in a single block grant program. In addition, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), HUD and its tribal partners negotiated the March 12, 1998 (63 FR 12349) final rule, which created a new 24 CFR part 1000 containing the IHBG program regulations.

The first meeting of the Committee took place in April 2003 and the Committee continued to meet thereafter on approximately a monthly basis. The Committee met a total of seven times. Subsequent to the conclusion of the negotiations, two workgroups were established. One workgroup was assigned the task of reviewing the approved regulatory language for content, format, style, and consistent use of terminology. The second workgroup was charged with developing the preamble to this proposed rule. The membership of both workgroups consisted of HUD and tribal representatives.

The Committee will be convening for a one-day session to review the draft regulatory text and preamble developed by the two workgroups. This one-day session will provide the members of the Committee with the opportunity to review the draft language and to pose questions to the workgroup members regarding the draft rule. The session will take place as described in the **DATES** and **ADDRESSES** section of this document.

Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: April 29, 2004.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. 04–10275 Filed 5–5–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AB08

Terrorism Risk Insurance Program; Litigation Management

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). That Act established a temporary Terrorism Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program ends on December 31, 2005. This notice of proposed rulemaking proposes regulations concerning litigation management related to insured losses under the Program. This proposed rule is the fifth in a series of regulations that Treasury is issuing to implement the Program.

DATES: Written comments may be submitted on or before July 6, 2004.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to the Terrorism Risk Insurance Program, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 2100, 1425 New York Avenue, NW., Washington, DC 20220. Because paper mail in the Washington, DC, area may be subject to delay, it is recommended that comments be submitted electronically to: *triacomments@do.treas.gov.* All comments should be captioned with May 6, 2004, NPRM TRIA Comments." Please include your name, affiliation, address, e-mail address, and telephone number in your comment. Comments may also be submitted through the Federal eRulemaking *Portal: http://www.regulations.gov.* Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: David Brummond, Legal Counsel, or C. Christopher Ledoux, Senior Attorney, Terrorism Risk Insurance Program, (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, which as defined in the Act is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the issuance of regulations and procedures. The Program will end on December 31, 2005. Thereafter, the Act provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation and reimbursement for insured losses arising out of any act of terrorism (as defined under the Act) occurring during the period between November 26, 2002, and December 31, 2005.

Each entity that meets the definition of "insurer" (well over 2000 firms) must participate in the Program. The amount of federal payment for an insured loss resulting from an act of terrorism is to be determined based upon insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's share prior to expiration of the Program. An insurer's deductible is calculated based on a percentage of the value of direct earned premiums collected over certain statutory periods. Once an insurer has met its individual deductible, the federal payments cover 90 percent of insured losses above the deductible, subject to an annual industry-aggregate limit of $100 billion.

The Program provides a federal reinsurance backstop for three years. The Act provides Treasury with authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Act also prohibits duplicative payments for insured losses that have been covered under any other federal program.

The mandatory availability or "make available" provisions in section 103(c) of the Act require that, for Program Year 1, Program Year 2, and, if so determined by the Secretary of the Treasury, for Program Year 3, all entities that meet the definition of insurer under the Program must make available in all of their property and casualty insurance policies coverage for insured losses resulting from an act of terrorism. This coverage cannot differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than acts of terrorism. The Secretary of the Treasury may determine, not later than September 1, 2004, to extend the make available requirements through Program Year 3, based on factors referenced in section 108(d)(1) of the Act. Regardless of whether the make available requirements of section 103 are extended, the Program and the Act's federal backstop for insured losses resulting from acts of terrorism continue through December 31, 2005.

As conditions for federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. In addition, the Act requires that insurers submit claims and make certain certifications to Treasury. Treasury has recently published in the **Federal Register** a proposed rule concerning claims regulations for the Program. *See* 68 FR 67100 (Dec. 1, 2003).

The Act also contains specific provisions designed to manage litigation arising out of or resulting from a certified act of terrorism. Among other provisions, section 107 creates, upon certification of an act of terrorism by the Secretary, an exclusive Federal cause of action and remedy for property damage, personal injury, or death arising out of or relating to an act of terrorism; preempts certain State causes of action; provides for consolidation of all civil actions in Federal court for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism; and provides that amounts awarded in actions for property damage, personal injury, or death that are attributable to punitive damages are not to be counted as "insured losses" and not paid under the Program. The Act also provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program. In this rulemaking, Treasury is proposing to implement these provisions of the Act to the extent that regulations are necessary for administration of the Program or involve the Federal share of compensation under the Program. This proposed regulation addresses the advance approval of proposed settlements of causes of action described in section 107 of the Act, as directed by the President in a *Memorandum to the Secretary of the Treasury*. *See* 38 Weekly Comp. Pres. Doc. 2096 (Nov. 25, 2002) (also accessible at *www.treasury.gov/trip*).

In implementing the Program, Treasury is guided by several goals. First, Treasury strives to implement the Act in a transparent and effective manner that treats comparably those insurers required to participate in the Program and provides necessary information to policyholders in a useful and efficient manner. Second, in accord with the Act's stated purposes, Treasury seeks to rely as much as possible on the State insurance regulatory structure. In that regard, Treasury has coordinated the implementation of all aspects of the Program with the National Association of Insurance Commissioners (NAIC). Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with procedures used in their normal course of business. Finally, given the temporary and transitional nature of the Program, Treasury is guided by the Act's goal that insurers develop their own capacity, resources, and mechanisms for terrorism insurance coverage when the Program expires.

B. Previously Issued Interim Guidance and Regulations

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Act prior to the issuance of regulations, Treasury issued interim guidance in four separate notices, on December 3 and 18, 2002 and on January 22 and March 25, 2003. The interim guidance addressed issues requiring clarification to immediately applicable provisions. The guidance was to be relied upon by insurers until superseded by regulations or a subsequent notice.

Treasury's first notice of Interim Guidance was published in the **Federal Register** at 67 FR 76206 on December 11, 2002, and addressed, among other matters, statutory disclosure obligations

of insurers as conditions for federal payment under the Program; the requirement that an insurer "make available" terrorism insurance; and how insurers were to calculate the "direct earned premium" received from commercial lines of property and casualty insurance as well as their "insurer deductibles" for purposes of the Program.

Treasury's second notice of interim guidance was published at 67 FR 78864 on December 26, 2002. The Interim Guidance addressed the statutory categories of "insurers" that are required to participate in the Program, including their "affiliates'; provided clarification on the scope of insured losses covered by the Program; and provided additional guidance to enable eligible surplus line carriers listed on the NAIC Quarterly Listing of Alien Insurers or Federally approved insurers to calculate their insurer deductibles for purposes of the Program. This was followed by Treasury's third notice of interim guidance, which was published at 68 FR 4544 on January 29, 2003. and further clarified certain disclosure and certification requirements, and addressed issues concerning non-U.S. insurers, and the scope of the term "insured loss" under the Act.[1]

On February 28, 2003 (68 FR 9804) Treasury published an interim final rule together with a proposed rule addressing the scope of the program, key definitions and certain general provisions to lay the groundwork for program implementation. This interim final rule was finalized and published in the **Federal Register** at 68 FR 41250 (July 11, 2003) (as amended at 68 FR 48280 (Aug. 13, 2003)) and created Subpart A of Part 50 in Title 31 of the Code of Federal Regulations. Treasury's second regulation created Subparts B and C of Part 50 as an interim final rule published in the **Federal Register** at 68 FR 19301 (Apr. 18, 2003) and was finalized and published at 68 FR 59720 (Oct. 17, 2003). These regulations address disclosures that insurers must make to policyholders as a condition for federal payment under the Act, and requirements that insurers make available, in their commercial property and casualty insurance policies, terrorism risk coverage for insured losses under the Program.

[1] Treasury's fourth interim guidance, published at 68 FR 15039 on March 27, 2003, provided insurers a procedure by which they could seek to rebut a presumption of control established in Treasury's first set of interim final regulations. The Interim Guidance has subsequently been superseded by a provision in the final rule for Subpart A of Part 50, Title 31 published at 68 FR 41250 (July 11, 2003).

Treasury also created a Subpart D to Part 50 of Title 31, which was first proposed and published in the **Federal Register** at 68 FR 19309 (Apr. 18, 2003) and finalized and published at 68 FR 59715 (Oct. 17, 2003). This regulation applies the provisions of the Act to State residual market insurance entities and State workers' compensation funds.

Most recently, Treasury published a proposed rule in the **Federal Register** at 68 FR 67100 (December 1, 2003) that adds Subparts F and G to Part 50 of Title 31. Subpart F establishes procedures for filing claims for payment of the Federal share of compensation for insured losses. Subpart G addresses information to be retained related to the handling and settlement of claims to enable Treasury to perform financial and claim audits.

II. The Proposed Rule

A. Overview

The rule proposed in this notice would create Subpart I of Part 50 in Title 31 of the Code of Federal Regulations. It would implement the litigation management provisions in section 107 of the Act, provide for advance approval of settlements of certain causes of action, and clarify related aspects of the Program. Upon certification of an act of terrorism by the Secretary, section 107 creates a Federal cause of action for property damage, personal injury, or death arising out of or resulting from the act of terrorism, which is the exclusive cause of action and remedy for such losses. In addition, section 107 provides that:

- All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are preempted;
- Civil actions are to be consolidated in a Federal district court or courts, as designated by the Judicial Panel on Multidistrict Litigation, which shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism;
- The substantive law for decision in such actions shall be derived from the law, including choice of law principles, of the State in which the act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law;
- Any amounts awarded in any action for property damage, personal injury, or death under section 107 that are attributable to punitive damages shall not count as "insured losses" for purposes of the Program;
- Contractual arbitration rights are preserved; and
- The United States has a right of subrogation with respect to any payment or claim paid pursuant to the Act.

In connection with the implementation of the litigation management provisions of the Act, the President directed the Secretary to use his authority under the Act to require insurers to obtain Treasury's advance approval before settling certain causes of action described in section 107 of the Act. The following discussion includes a section-by-section analysis of these proposed regulatory provisions.

B. Exclusive Federal Cause of Action and Remedy (Section 50.80)

Section 107(a)(1) of the Act states that once the Secretary has certified that an act of terrorism has occurred pursuant to section 102 of the Act, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism. The Federal cause of action shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in section 107(b) of the Act, as discussed further below. The exclusive Federal cause of action created by the Act applies to all actions for property damage, personal injury, or death arising out of or resulting from a certified act of terrorism, regardless of whether the cause of action involves an insured loss covered by commercial property and casualty insurance. Section 50.80(a) of the proposed rule follows this provision of the Act.

Section 107(b) of the Act creates an exception to the exclusive Federal cause of action and remedy established in section 107(a) by stating that nothing in the litigation management provisions of section 107 shall in any way limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism certified as such under the Act. The proposed rule reflects this exception.

Section 107(e) of the Act provides that section 107 applies only to actions for property damage, personal injury, or death that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program. Under the Act, the Program terminates on December 31, 2005 (*see* section 108(a) of the Act); therefore the

proposed rule provides that the exclusive cause of action and remedy exists only for those causes of action that arise out of or result from certified acts of terrorism that occur through December 31, 2005.

Finally, section 107(d) of the Act provides that section 107 shall not be construed to affect (1) any party's contractual right to arbitrate a dispute; or (2) any provision of the Air Transportation Safety and System Stabilization Act (Pub. L. 107–42; 49 U.S.C. 40101 note). Section 50.80(c) of the proposed rule follows the provisions of the Act.

C. Preemption of State Causes of Action (Section 50.81)

The Act preempts all State causes of action for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law, except as provided in section 107(b). *See* section 107(a)(2) of the Act. Section 50.81 of the proposed rule reflects this statutory preemption and includes the circumstances where the Act does not limit liability (*i.e.*, for causes of action against any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism.)

Treasury recognizes that the Act's preemption of State causes of action for personal injury or death raises a question regarding the treatment of workers' compensation claims under section 107. It is Treasury's view that section 107(a)(2) of the Act does not preempt workers' compensation claims involving personal injury or death on the basis that workers' compensation claims are not "causes of action" for personal injury or death within the meaning of section 107. A "cause of action" is a group of operative facts giving rise to one or more bases for one person to sue and obtain a remedy in court from another person.[2] As a general matter, the laws of the various States have eliminated "causes of action" for work-related injuries and replaced them with various types of workers' compensation systems; therefore, there are no "causes of action * * * otherwise available under State law" for work related injuries within the meaning of section 107(a)(2). Thus, it is Treasury's view that the preemption provision in section 107(a)(2) does not extend to workers' compensation systems in the various States.

[2] *See* Black's Law Dictionary 214 (7th ed. 1999).

D. Program Procedures for Notifying Federal Court

Section 107(a)(4) of the Act provides that for each act of terrorism certified by the Secretary pursuant to section 102 of the Act, the Judicial Panel on Multidistrict Litigation shall designate one district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism.

The Act also provides that the Judicial Panel on Multidistrict Litigation is to designate the district court or courts not later than 90 days after the occurrence of an act of terrorism. However, it is the Secretary's certification of an act of terrorism that triggers the creation of the exclusive Federal cause of action and the need for the Judicial Panel to designate a district court for the consolidation of actions. Therefore, to facilitate administration of the Program, Treasury intends to notify the Panel as soon as practicable following any certification of an act of terrorism. In this regard, Treasury is considering the appropriate operational procedures that it would follow once an act of terrorism is certified by the Secretary. Treasury invites comments on such procedures from all interested parties.

E. Failure To Litigate in Federal Court Pursuant to the Act

In applying section 107(a)(4) of the Act specifically to the Program, Treasury is considering whether it is appropriate or necessary to include in Part 50 a rule providing that any amounts awarded in any civil action relating to or arising out of an act of terrorism that are not awarded by the district court or district courts designated by the Judicial Panel on Multidistrict Litigation shall be ineligible for compensation, regardless of whether the amounts awarded are insured losses covered by commercial property and casualty insurance issued by an insurer. Treasury solicits public comment on such a provision from all interested parties.

F. Treasury's Advance Approval of Settlements (Section 50.82)

On November 26, 2002, upon signing the Terrorism Risk Insurance Act of 2002, the President issued a *Memorandum to the Secretary of the Treasury* that directed the Secretary to propose a rule requiring insurers to obtain the advance approval of Treasury of any proposed settlements of causes of action described in section 107 of the Act arising out of or resulting from an act of terrorism. 38 Weekly Comp. Pres. Doc. 2096 (Nov. 25, 2002) (also accessible at *www.treasury.gov/trip*).

The Act authorizes Treasury to administer the Program, investigate and audit claims, and pay the Federal share of compensation for insured losses. (*see* section 104(a) of the Act). In addition, under section 103(b)(3) of the Act, Treasury is authorized to prescribe reasonable procedures concerning insurers' processing of claims for insured losses, which become conditions for federal payment. Pursuant to its administrative authority under the Act and to protect the interests of the United States, the proposed rule requires advance approval by Treasury of proposed settlements of certain causes of action described in section 107, to the extent liability for such causes of action is covered by or paid, in whole or in part, by an insurer pursuant to coverage for insured losses under the Program, provided that the insurer intends to submit the settlement as part of its claim for federal payment under the Program.

1. Pre-Approval of Certain Proposed Settlements

Under section 104(a)(2), the Secretary is authorized to prescribe regulations to administer and implement the Program effectively. Treasury believes that establishing monetary thresholds below which an insurer is not required to seek pre-approval by Treasury of settlements balances the need to protect the interests of the United States with the administrative costs involved in the advance approval of settlements. Treasury invites comments on these thresholds (which are explained in more detail below) from all interested parties.

Treasury's proposed rule would require an insurer to seek Treasury's advance, written approval where an insurer (directly or through its insured) intends to settle a Federal cause of action involving third-party liability claims (by a third party against an insured and/or the insurer) for property damage, personal injury, or death arising out of or resulting from an act of terrorism when:

- Any portion of the proposed settlement amount that is attributable to liability for personal injury or death is $1 million or more, or that is attributable to liability for property damage (including loss of use) is $5 million or more, regardless of the number of third-party liability claims being settled; and
- All or part of the settlement amount is expected to be part of the insurer's

claim for federal payment under the Program (included in the insurer's aggregate insured losses). No approval is required if the insurer does not intend to and does not submit all or part of the settlement as part of its claim for federal payment of insured losses under the Program.

Treasury notes that its proposed settlement approval requirement applies to Federal causes of action described above regardless of whether a lawsuit has actually been filed or an arbitration commenced with respect to the matter.

Treasury also notes that settlements that are not required to be submitted for prior approval are still subject to Treasury review, like any other claim, at the point of claim submission by the insurer or at the time of any audit (*see* Subparts F and G proposed as part of claims and audit rulemakings, 68 FR 67100 (Dec. 1, 2003).

Treasury views this prior approval requirement as extending to settlements for insured losses arising from third-party claims for property damage, personal injury or death against a commercial insured. Most commercial liability policies provide coverage for the insured's defense of such action. In this regard, the insurer is usually involved in the settlements of litigated third-party property and casualty claims. Through the insurer, Treasury will have final settlement approval authority.

Coverage disputes and other civil actions invoiving contract rights are not included in the scope of the civil actions requiring advanced settlement approval by Treasury. Such disputes involve causes of action that are based on contract law, not on property damage, personal injury, or death and are not subject to prior approval by Treasury.

Treasury seeks comments on how frequently claims are received by commercial property and casualty insurers under commercial liability policies where the insured settles directly with a claimant and then notifies the insurer after the settlement has been consummated. In this situation, if the insurer was not promptly notified in advance of the settlement, the insurer may have difficulty meeting the requirement to obtain prior approval from Treasury of the proposed settlement, jeopardizing the application of federal reinsurance under the Program. Treasury invites public comments on the frequency of such situations, the size of claims usually involved, and possible approaches to address these situations.

2. Factors To Be Reviewed by Treasury

In determining whether to approve a proposed settlement, and in keeping with its obligation to safeguard the use of taxpayer resources, Treasury will consider the nature of the insured loss, the facts and circumstances surrounding the loss, and other factors such as whether:

- The proposed settlement compensates for a *bona fide* loss that is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy;
- Any amount of the proposed settlement is attributable to punitive or exemplary damages intended to punish or deter (whether or not specifically so described as such damages);
- The settlement amount offsets amounts received from the United States pursuant to any other Federal program;
- Attorneys' fees and expenses in connection with the settlement are unreasonable or inappropriate, in whole or in part and whether they have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated; and
- Any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement, including the information contained in section 50.83.

Additionally, Treasury will review any proposed settlement in accordance with proposed section 50.50 of Subpart F, including whether:

- The settlement was fraudulent, collusive, in bad faith, or otherwise dishonest; and
- The insurer took all businesslike steps reasonably necessary to properly and carefully investigate and ascertain the amount of the loss consistent with appropriate business practices.

3. Settlement Without Treasury's Approval

If an insurer settles a cause of action after Treasury has rejected the proposed settlement, or if an insurer settles a cause of action without seeking Treasury's approval in advance, as required by section 50.82, the insurer will not be entitled to the Federal share of the amount paid as part of its claim for federal payment unless the insurer can demonstrate, to the satisfaction of the Treasury, extenuating circumstances. Also, the insurer shall not be entitled to include the paid settlement amount as an insured loss in its aggregate insured losses (whether or not those aggregate insured losses exceed the insurer deductible) for purposes of calculating the Federal share of compensation due to the insurer under the Program. Treasury is proposing to make advance approval of certain settlements a condition for federal payment under the Program, unless the insurer demonstrates, to the satisfaction of the Treasury, that extenuating circumstances prevented the insurer from seeking Treasury's advance approval.

4. Ensuring That Punitive Damages Are Not Compensated for Under the Program

Section 107(a)(5) of the Act provides that any amounts awarded in actions under section 107(a)(1) of the Act (exclusive Federal cause of action for property damage, personal injury, or death arising out of or resulting from an act of terrorism) that are attributable to punitive damages shall not count as insured losses under the Act. Punitive damages, sometimes also referred to as exemplary damages, are damages that are not compensatory in nature but are an award of money made to a claimant solely to punish or deter a wrongdoer. Because section 107(a)(5) of the Act does not consider punitive damages as "insured losses" under the Act, the Federal Government will not compensate an insurer for such damages. Accordingly, Treasury has proposed amending section 50.5 of Subpart A (as part of another proposed rulemaking recently published in the **Federal Register**) and amending the definition of "insured loss" specifically to exclude punitive or exemplary damages as compensable under the Program.

Consistent with the proposed claims procedures rule, a factor Treasury will consider in approving a proposed settlement is whether the settlement excludes punitive damages, regardless of how the parties to the settlement agreement characterize the payment. An insurer shall be required to identify any portion of a proposed settlement amount that is attributable to punitive damages, or that intends to compromise a claim or demand for punitive damages in a cause of action for which punitive damages could be awarded. Treasury will review proposed settlements to determine whether all or part of the settlement amount is intended to compromise an actual or threatened claim for punitive or exemplary damages, even if the settlement does not indicate that the payment includes punitive or exemplary damages.

5. Evaluating Attorneys' Fees and Expenses

One of the factors Treasury will take into account in reviewing proposed settlements is the amount of attorneys' fees and other legal expenses. In evaluating the appropriateness of attorneys' fees and expenses that are part of any proposed settlement, Treasury intends to consider such factors as those weighed by Federal courts regarding the reasonableness of attorneys' fees under applicable law. Among the factors Treasury may consider are the time and labor required; the novelty and difficulty of the questions; the skill requisite to perform the legal service properly; the customary fee; whether the fee is fixed or contingent; the amount involved and results obtained; the experience, reputation, and the ability of the attorneys; and awards in similar cases. In addition, Treasury will determine whether the attorneys' fees in question have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated.

G. Procedures for Requesting Approval of Settlements (Section 50.83)

Section 50.83 of the proposed rule establishes a procedure for an insurer to submit proposed settlements for advance approval by Treasury. Generally, within 30 days after Treasury's receipt of a complete notice of the proposed settlement and an insurer's request that the proposed settlement be approved, Treasury may issue a written response and either approve or disapprove the proposed settlement, in whole or in part. If Treasury does not issue a written response within 30 days after its receipt of a complete notice (or within the time as extended in writing by Treasury), the request for advance approval of the settlement will be deemed approved under section 50.83. (The settlement will still be subject to review under the claims procedures.) The proposed rule also outlines the minimum information Treasury believes may be relevant and useful in considering whether to approve a proposed settlement. Treasury invites public comment concerning this settlement approval request process.

H. Right of Subrogation (Section 50.84)

Section 107(c) of the Act provides that the United States shall have the right of subrogation with respect to any payment or claim paid by the United States under the Act. In most commercial insurance policies, insurance companies become subrogated to the rights of the persons they pay, to the extent of payment. In section 50.85, Treasury proposes to require insurers to take steps to preserve rights of subrogation under section 107(c).

III. Procedural Requirements

Executive Order 12866, "Regulatory Planning and Review"

This proposed rule is a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review," and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The proposed rule establishes requirements for advance approval of settlements when claims are to be submitted for insured losses. There is no impact on small insurers unless an act of terrorism occurs and federal compensation is sought by small insurers entitled to reimbursement for their insured losses. If an act of terrorism occurs and federal payment is sought through a claim, the proposed rule's impact on small insurers is likely to be minimal because most of the information that would have to be submitted in connection with Treasury approval of settlements largely duplicates information already contained in an insurer claim file or an attorney case file. Moreover, the $1 million and $5 million thresholds for the submission of settlements to Treasury for approval is likely further to minimize burdens on small insurers.

Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (preferably by FAX to 202–395–6974, or by email to *jlackeyj@omb.eop.gov*). A copy of the comments should also be sent to Treasury at the following address: Terrorism Risk Insurance Program, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 2100, 1425 New York Avenue, NW., Washington, DC 20220 and electronically to: *triacomments@do.treas.gov*. Comments on the collection of information should be received by June 7, 2004.

Treasury specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The collection of information in the proposed rule is the information required in connection with requests for Treasury approval of proposed settlements in § 50.83. The submission of specified information in connection with a proposed settlement is mandatory for any insurer that seeks payment of a Federal share of compensation.

If an act of terrorism is certified under the Act, the number of settlements, if any, will be determined by the size and nature of the certified act of terrorism. Because of the extreme uncertainty regarding any such event, a "best estimate" has been developed based on the considered judgment of Treasury. This estimate has 100 insurers sustaining insured losses; each of these insurers would process an average of 100 underlying claims for a total of 10,000 claims. If one in five claims involves amounts in dispute that exceed the monetary thresholds in § 50.82(a), there would be 2,000 claims eligible for settlement. If 90 percent of these claims settle before any judgment or award, this would require 1,800 claims to be submitted to Treasury for advance approval under Subpart I.

The information required by Treasury in connection with a request for advanced approval of a proposed settlement in § 50.83 largely duplicates

information already contained in an insurer claim file or an attorney case file. The burden associated with compiling and submitting such information to Treasury is therefore relatively moderate.

Accordingly, Treasury estimates that the proposed rule will impose 5 hours of burden with respect to each claim. The estimated annual burden of the proposed rule is therefore 9,000 hours.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, 31 CFR part 50 is proposed to be amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note).

2. Subpart I of part 50 is added to read as follows:

Subpart I—Federal Cause of Action; Approval of Settlements

Sec.

Subpart I—Federal Cause of Action; Approval of Settlements

§ 50.80 Federal cause of action and remedy.

(a) *General.* Upon certification of an act of terrorism pursuant to section 102 of the Act, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, pursuant to section 107 of the Act, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in paragraph (c) of this section.

(b) *Effective period.* The exclusive Federal cause of action and remedy described in paragraph (a) of this section shall exist only for causes of action for property damage, personal injury, or death that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program as set forth in section 108 of the Act.

(c) *Rights not affected.* Nothing in section 107 of the Act or this Subpart shall in any way:

(1) Limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism;

(2) Affect any party's contractual right to arbitrate a dispute; or

(3) Affect any provision of the Air Transportation Safety and System Stabilization Act (Pub. L. 107–42; 49 U.S.C. 40101 note).

§ 50.81 State causes of action preempted.

Upon certification of an act of terrorism pursuant to section 102 of the Act, all State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from such act of terrorism that are otherwise available under State law are preempted, except that, pursuant to section 107(b) of the Act, nothing in this section shall limit in any way the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits the act of terrorism certified by the Secretary.

§ 50.82 Advance approval of settlements.

(a) *General.* An insurer shall submit to Treasury for advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, including any agreement between its insured(s) and third parties, involving an insured loss, all or part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program, when:

(1) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving personal injury or death in the aggregate is $1 million or more, regardless of the number of causes of action or insured losses being settled; or

(2) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving property damage (including loss of use) in the aggregate is $5 million or more, regardless of the number of causes of action or insured losses being settled.

(b) *Factors.* In determining whether to approve a proposed settlement in advance, Treasury will consider the nature of the loss, the facts and circumstances surrounding the loss, and other factors such as whether:

(1) The proposed settlement compensates for a loss that is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy;

(2) Any amount of the proposed settlement is attributable to punitive or exemplary damages intended to punish or deter (whether or not specifically so described as such damages);

(3) The settlement amount offsets amounts received from the United States pursuant to any other Federal program;

(4) The settlement does not involve unreasonable or inappropriate attorneys' fees and legal expenses and whether they have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated; and

(5) Any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement, including the information contained in § 50.83.

(c) *Settlement Without Seeking Advance Approval or Despite Disapproval.* If an insurer settles a cause of action or agrees to the settlement of a cause of action without submitting the proposed settlement for Treasury's advance approval in accordance with this section and in accordance with § 50.83 or despite Treasury's disapproval of the proposed settlement, the insurer will not be entitled to include the paid settlement amount (or portion of the settlement amount, to the extent partially disapproved) in its aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses, unless the insurer can demonstrate, to the satisfaction of Treasury, extenuating circumstances.

§ 50.83 Procedure for requesting approval of proposed settlements.

(a) *Submission of Notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at *http://www.treasury.gov/trip* following any certification of an act of terrorism pursuant to section 102(1) of the Act.

(b) *Complete Notice.* Treasury will review requests for advance approval and determine whether additional information is needed to complete the notice.

(c) *Treasury Response or Deemed Approval.* Within 30 days after Treasury's receipt of a complete notice, or as extended in writing by Treasury, Treasury may issue a written response and indicate its partial or full approval

or rejection of the proposed settlement. If Treasury does not issue a response within 30 days after Treasury's receipt of a complete notice, unless extended in writing by Treasury, the request for advance approval is deemed approved by Treasury. Any settlement is still subject to review under the claim procedures pursuant to § 50.50.

(d) *Notice Format.* A notice of a proposed settlement should be entitled, "Notice of Proposed Settlement—Request for Approval," and should provide the full name and address of the submitting insurer and the name, title, address, and telephone number of the designated contact person. An insurer must provide all relevant information, including the following, as applicable:

(1) A brief description of the insured's underlying claim, the insured's loss, the amount of the claim, the operative policy terms, defenses to coverage, and all damages sustained;

(2) An itemized statement of all damages by category (*i.e.*, actual, economic and non-economic loss, punitive damages, *etc.*);

(3) A statement from the insurer or its attorney recommending the settlement and the basis for the recommendation;

(4) The total dollar amount of the proposed settlement;

(5) Indication as to whether the settlement was negotiated by counsel;

(6) The net amount to be paid to the insured and/or third party;

(7) The amount to be paid that will compensate attorneys for their services and expenses and an explanation as to why the amount is not unreasonable;

(8) The amount received from the United States pursuant to any other Federal program for compensation of insured losses related to an act of terrorism;

(9) The proposed terms of the written settlement agreement, including release language and subrogation terms;

(10) Other relevant agreements, including:

(i) Admissions of liability or insurance coverage;

(ii) Determinations of the number of occurrences under a commercial property and casualty insurance policy;

(iii) The allocation of paid amounts or amounts to be paid to certain policies, or to specific policy, coverage and/or aggregate limits; and

(iv) Any other agreement that may affect the payment or amount of the Federal share of compensation to be paid to the insurer;

(11) A statement indicating whether the proposed settlement has been approved by the Federal court or is subject to such approval and whether such approval is expected or likely; and

(12) Such other information as may be requested by Treasury or its designee.

§ 50.84 Subrogation.

An insurer shall not waive its rights of subrogation under its insurance policy and shall take all steps necessary to preserve the subrogation right of the United States as provided by section 107(c) of the Act.

Dated: April 29, 2004.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 04–10205 Filed 5–5–04; 8:45 am]

BILLING CODE 4811–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–GA–0001–200411; FRL–7656–8]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Georgia State Implementation Plan (SIP) submitted by the Georgia Environmental Protection Division (GAEPD) on December 24, 2003. The revision pertains to the Post-1999 Rate-of-Progress Plan (Post-1999 ROP Plan). This submittal was made to meet the reasonable further progress requirements of section 182 of the Clean Air Act, as amended in 1990 (CAA). The SIP revision also establishes a motor vehicle emissions budget (MVEB) for transportation conformity purposes of 160.8 tons per day (tpd) of volatile organic compounds (VOC) and 318.24 tpd of nitrogen oxides (NO_X) for 2004. Today, EPA is proposing to approve Georgia's Post-1999 ROP plan, including the 2004 MVEBs contained therein. In addition, in this proposed rulemaking EPA is providing information on the status of its transportation conformity adequacy determination for the 2004 MVEBs that are contained in the Post-1999 ROP SIP submittal.

DATES: Written comments must be received on or before June 7, 2004.

ADDRESSES: Comments may be submitted by mail to: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections IV.B.1 through 3. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the CAA requires ozone nonattainment areas with air quality classified as "moderate" or worse to submit plans showing reasonable further progress towards attainment of the national ambient air quality standards (NAAQS). Because Atlanta was classified as a "serious" nonattainment area for ozone, the CAA required Georgia to develop a SIP to reduce emissions of VOCs in the 13-county Atlanta 1-hour ozone nonattainment area by 15 percent from 1990 to 1996. The most recent revision to Georgia's 15% Rate-of-Progress (ROP) SIP (*i.e.*, the 15% Plan) was submitted by the GAEPD on June 17, 1996, and was approved by the EPA effective May 26, 1999, (64 FR 20186).

The CAA also requires Post-1996 emission reductions of VOCs and/or NO_X totaling 3 percent per year, averaged over each consecutive three-year period beginning in 1996 and continuing through the attainment date. Georgia chose to rely solely on NO_X emission reductions in its Post-1996 ROP SIP (*i.e.*, the 9% Plan). This plan was required to describe how Georgia would achieve reasonable further progress towards attaining the ozone NAAQS between 1996 and 1999, the attainment deadline for serious nonattainment areas. The most recent revision to Georgia's 9% Plan was submitted June 17, 1996, and was approved by EPA effective April 19, 1999, (64 FR 13348).

On July 17, 2001, GAEPD submitted the Atlanta 1-hour ozone attainment SIP to EPA which included a demonstration that Atlanta would attain the 1-hour ozone NAAQS by November 15, 2004. That attainment demonstration, including the extension of the attainment date, was approved by the EPA in a notice published in the

Federal Register on May 7, 2002, (67 FR 30574), which cited EPA's policy to grant attainment date extensions for areas dependent upon upwind States' emission reductions mandated by the regional NO_X SIP Call as a basis for approval. Subsequently, in challenges to other attainment date extensions, several Federal appeals courts ruled that EPA lacked the authority to grant such attainment date extensions. On February 20, 2003, EPA filed a motion for voluntary vacatur of Atlanta's attainment date extension and approval of Atlanta's ozone attainment demonstration. On June 16, 2003, the United States Court of Appeals for the Eleventh Circuit issued an order granting EPA's motion, thereby vacating approval of the July 17, 2001, attainment demonstration.

In response to these court rulings, EPA issued a final rulemaking action in the September 26, 2003, **Federal Register** (68 FR 55469). It included a determination that the Atlanta area had failed to attain the 1-hour ozone standard by the statutory deadline of November 1, 1999, and that by operation of law, the Atlanta area was being reclassified as a "severe" ozone nonattainment area effective January 1, 2004. Under section 181(a)(1) of the CAA, the attainment deadline for Atlanta as a new "severe" nonattainment area is "as expeditiously as practicable," but not later than November 15, 2005.

GAEPD has recently conducted an Early Attainment Assessment to review the progress made to date in implementing the July 17, 2001, ozone attainment SIP. The Early Attainment Assessment indicates that the emission reductions achieved to date from the 1-hour ozone attainment SIP control measures have been effective in reducing monitored levels of ozone and that the area appears to be on track to attain by the end of the 2004 ozone season.

EPA's September 26, 2003, action requires submission of a severe area Post-1999 ROP SIP. The severe area Post-1999 SIP must describe how at least a 3 percent per year reduction in emissions of ozone precursors (VOCs or NO_X) will be achieved, from the time of failure to meet the "serious" area attainment date (November 15, 1999) until the "severe" area attainment date.

This Atlanta severe area Post-1999 ROP SIP contains a description of how the 3 percent per year reductions in ozone precursor emissions, required over the period from November 15, 1999, through November 15, 2004, will be achieved. It also contains MVEBs for the Atlanta 1-hour ozone nonattainment area. Submission only through 2004 is based on the State's Early Attainment Assessment discussed above. GAEPD requests that EPA review and approve the Post-1999 ROP SIP and MVEB.

II. Analysis of State's Submittal

Plan Requirements: This plan was prepared in accordance with the SIP requirements established in 40 CFR part 51, and EPA guidance. The plan contains all of the required elements of a rate-of-progress plan, and is consistent with existing guidelines for implementation plans. The rate-of-progress plan contains a detailed analysis of each of the following elements: Base Year Emissions Inventories; Target Level Calculations; Control Measures; Projected Emissions; MVEB; Milestone Failure Contingencies; and Reporting Requirements.

This Post-1999 ROP is not required, nor intended, to demonstrate attainment of the 1-hour ozone NAAQS. The ROP Plan is a description of how emissions reductions of 3 percent per year in the Atlanta area will be achieved. Consistent with Georgia's 9% plan; this Post-1999 ROP will rely solely on reductions of NO_X emissions.

In order to develop the Post-1999 ROP Plan in accordance with EPA guidance, GAEPD updated the 1990 NO_X emissions in inventory and adjusted the inventory by removing NO_X already scheduled for control by previous Federal regulations on motor vehicles and gasoline volatility. The required NO_X reductions and the resulting target levels of future NO_X emissions were calculated, growth in NO_X emissions was estimated, and the effects on projected emissions of various emissions control rules already adopted and implemented, or scheduled for implementation prior to the end of 2004, were calculated. These controls were found to be more than sufficient to reduce overall NO_X emissions by 3 percent per year while also offsetting all of the growth in NO_X emissions projected to occur between 1999 and 2002, and between 2002 and 2004.

Calculation of Post-1999 Emission Target Levels: The Post-1999 ROP SIP was prepared following the guidance in:

—Section 4.2 of EPA's Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration ("the ROP guidance");

—The December 23, 1997, guidance memo from Richard D. Wilson, EPA's Acting Assistant Administrator for Air and Radiation, Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS ("the guidance memo"); and

—EPA's Policy guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity (the "MOBILE6 policy guidance").

The ROP guidance provides step-by-step procedures for calculating the Post-1999 target level emissions. The projected inventory for an ROP milestone year with all control measures in place and reflecting any growth in activity projected to occur by the milestone year must be equal to or less than the target level of emissions for that milestone year.

The Rate-of-Progress Inventory is the base inventory from which the target levels of emissions for the milestone years must be calculated. These target levels reflect the required percent reductions, net of growth, from base year emissions that must be achieved to meet the requirements of the CAA. Therefore this plan starts with the 1990 Rate-of-Progress Base Year Inventory.

1990 Rate-of-Progress Base Year Inventory: The 1990 Rate-of-Progress Base Year inventory is comprised of the anthropogenic point, area, nonroad, and mobile sources in the 13-county 1-hour ozone nonattainment area. The 1990 Rate-of-Progress Base Year Inventory, as defined in section 4.2 of the ROP guidance document, has changed since submittal in November 1993. Emissions from the mobile and the nonroad sectors have been updated using the latest models and, for mobile sources, revised 1990 speeds. The updated 13-county 1990 Rate-of-Progress Base Year Inventory totals 625.9 NO_X tpd (*see* Table 1 below). The Adjusted Base Year mobile source emissions inventories, described below, also reflect an updated registration distribution by age.

The December 23, 1997, EPA guidance memo also allows emission reductions from sources outside the nonattainment area to count towards Post-1999 ROP requirements. Section 5 of the guidance memo states that areas in nonattainment for the 1-hour ozone standard can "take credit for emissions reductions obtained from sources outside the designated nonattainment area for the Post-1999 ROP requirements as long as the sources are no farther than 100 km (for VOC sources) or 200 km (for NO_X sources) away from the nonttainment area * * * [E]missions from the source(s) outside the nonattainment area * * * must be included in the baseline ROP emissions and target ROP reduction calculation. Emissions from source(s) outside the nonattainment area that are not involved in the substitution would not have to be inventoried or included in

the baseline ROP emissions and target ROP calculation."

For this Post-1999 ROP SIP, GAEPD is including reductions of NO_X emissions at five coal-fired electrical power plants. These Georgia Power Company plants impact the nonattainment area but are located in neighboring counties designated as attainment for the 1-hour ozone standard. As a control strategy to attain the 1-hour ozone standard in Atlanta, stricter controls have been placed on these power plants. The 1990 NO_X emissions from these five power plants are shown below in Table 2. All five of these power plants are located within 200 kilometers of the Atlanta 1-hour ozone nonattainment area.

The sum of the updated 1990 Rate-of-Progress NO_X emissions inventory for the Atlanta 1-hour ozone nonattainment area plus the 1990 base year NO_X emissions from these five power plants is approximately 1262.4 tpd (See Table 1 below).

TABLE 1.—1990 RATE-OF-PROGRESS BASE YEAR INVENTORY

	1990 NO_X emissions (tpd)				
	Point	Area	Nonroad	Mobile	Total
1990 ROP Base Year Inventory	121.3	25.7	85.0	393.9	625.9
Five Power Plants Inventory	636.5				636.5
Total	757.8	25.7	85.0	393.9	1262.4

TABLE 2.—1990 NO_X EMISSIONS FROM FIVE POWER PLANTS

Power plant	County	1990 NO_X emissions (tpd)
Plant Bowen	Bartow	200.3
Plant Branch	Putnam	160.1
Plant Hammond	Floyd	78.9
Plant Scherer	Monroe	87.1
Plant Wansley	Heard	110.1
Total		636.5

Adjusted Base Year Inventories: As explained in section 4.2 of the ROP guidance, "The 1990 adjusted base year inventories must be calculated relative to each milestone * * * year. * * * The only adjustment that must be made to the inventories * * * is to recalculate mobile source emissions. * * *" The development of the Adjusted Base Year Inventories requires excluding from those inventories, the emission reductions that would occur by the milestone years as a result of Federal programs already mandated prior to the 1990 CAA.

The adjustments exclude:

—Emissions reductions that would occur by the milestone years as a result of the Federal Motor Vehicle Control Program (FMVCP) promulgated prior to the 1990 CAA; and

—Reductions that would result by the milestone years from the Reid Vapor Pressure (RVP) regulations promulgated under the Act.

These adjustments are made because states are not allowed to take credit for emissions reductions that would have occurred due to fleet turnover from vehicles meeting pre-1990 standards to newer cars and trucks, or from previously existing Federal fuel regulations. These non-creditable reductions are called the FMVCP/RVP reductions. Table 3 below shows the FMVCP/RVP reductions.

TABLE 3.—FMVCP/RVP REDUCTIONS

	Mobile source NO_X emissions (tpd)	FMVCP/RVP reductions (tpd)
1990 Base Year	393.9	
1990 Adjusted to 1999	309.1	84.8
1990 Adjusted to 2002	281.6	112.3
1990 Adjusted to 2004	263.6	130.3

The 1990 Adjusted Base Year Inventories were prepared using MOBILE6.2 emission factors; 1990 speeds extrapolated from the Atlanta Regional Commission's (ARC) travel demand model networks for 2000, 2002, 2004, and 2005; 1990 vehicle miles traveled (VMT) data provided by Georgia Department of Transportation; and an updated fleet age distribution. The adjusted base year inventory calculation procedure described in the ROP guidance, section 4.2, Step 3, was used. The 13-county 1990 Base Year NO_X Inventory Adjusted to 2002 totals 513.6 tpd, as shown in Table 4. The 13-county 1990 Base Year NO_X Inventory Adjusted to 2004 totals 495.6 tpd, as shown in Table 5.

TABLE 4.—1990 ADJUSTED TO 2002 BASE YEAR NO_X INVENTORY

	NO_X emissions (tpd)				
	Point	Area	Nonroad	Mobile	Total
1990 Adjusted to 2002	121.3	25.7	85.0	281.6	513.6
Five Power Plants	636.5				636.5
Total	757.8	25.7	85.0	281.6	1150.1

TABLE 5.—1990 ADJUSTED TO 2004 BASE YEAR NO_X INVENTORY

	NO_X emissions (tpd)				
	Point	Area	Nonroad	Mobile	Total
1990 Adjusted to 2004	121.3	25.7	85.0	263.6	495.6
Five Power Plants	636.5				636.5
Total	757.8	25.7	85.0	263.6	1132.1

Required Emission Reductions: To calculate the required emissions reduction in tpd, the adjusted base year inventory adjusted to each ROP target year is added to the 1990 NO_X emissions from the five power plants, then multiplied by 3 percent for each year between the previous target year (1999 or 2002) and the current target year (2002 or 2004). The required NO_X reductions for 2002 and 2004 are presented in Tables 6 and 7, respectively.

TABLE 6.—REQUIRED NO_X REDUCTIONS FOR 2002

Adjusted Base Year Inventory	513.6 tpd
Plus Power Plant Emissions	+636.5 tpd
	1150.1 tpd
Times Factor (3% × 3 years)	×0.09
Emissions Reductions Needed	103.5 tpd

TABLE 7.—REQUIRED NO_X REDUCTIONS FOR 2004

Adjusted Base Year Inventory	495.6 tpd
Plus Power Plant Emissions	+636.5 tpd
	1132.1
Times Factor (3% × 2 years)	×0.06
Emissions Reductions Needed	67.9 tpd

The target level for the previous target year (1999 or 2002) is needed for calculating emissions target levels for the current target year, 2002 or 2004. The 1999 target level from the 9% Plan was recalculated using the results of the updated 1990 Base Year mobile source and nonroad modeling. To calculate the updated 1999 target emissions level, the reductions necessary to meet the 9 percent emissions reduction requirement and the FMVCP/RVP reductions were subtracted from the sum of the 1990 ROP inventory and the 1990 NO_X emissions from the five power plants. The results, in NO_X tpd, are shown in Table 8 below:

TABLE 8.—UPDATED NO_X EMISSIONS TARGET LEVEL FOR 1999

1990 NO_X ROP Inventory plus 5 GA Power Plants	1262.4 tpd
FMVCP Reductions (1990–1999)	−84.8 tpd
Adjusted Base Inventory	1177.6 tpd
Required Reductions (9% of Adjusted Base)	−106.0 tpd
NO_X Target Level for 1999	1071.6 tpd

Target levels for the ROP milestone years are calculated by subtracting the required milestone year reduction and the fleet turnover correction from the previous milestone year's emissions target level. The fleet turnover correction is the difference between an Adjusted Base Year mobile source emissions inventory adjusted to the previous target year (1999 or 2002) and an Adjusted Base Year mobile source inventory adjusted to the current target year (2002 or 2004). Table 9 below shows the fleet turnover correction.

TABLE 9.—FLEET TURNOVER CORRECTION

	Mobile source NO_X emissions (tpd)	Fleet turnover correction (tpd)
1990 Adjusted to 1999	309.1	
1990 Adjusted to 2002	281.6	27.5
1990 Adjusted to 2004	263.6	18.0

Tables 10 and 11 show NO_X Target Level Calculations for 2002 and 2004, respectively.

TABLE 10.—NO_X EMISSIONS TARGET LEVEL FOR 2002

Updated NO_X Target Level for 1999	1071.6 tpd

TABLE 10.—NO_X EMISSIONS TARGET LEVEL FOR 2002—Continued

Required Reduction (9% of Adjusted Base)	−103.5 tpd

TABLE 10.—NO_X EMISSIONS TARGET LEVEL FOR 2002—Continued

Fleet Turnover Correction, 1999 to 2002	−27.5 tpd
NO_X Target Level for 2002	940.6 tpd

TABLE 11.—NO_X EMISSIONS TARGET LEVEL FOR 2004

NO_X Target Level for 2002	940.6 tpd
Required Reduction (6% of Adjusted Base)	−67.9 tpd
Fleet Turnover Correction, 2002 to 2004	−18.0 tpd
NO_X Target Level for 2004	854.7 tpd

Control Measures: This section describes the control measures being relied upon for this Post-1999 ROP Plan. Note that the projected emissions described below do not reflect any effects of maximum achievable control technology (MACT) and reasonably available control technology (RACT) on major sources and are therefore conservatively high. The projected emissions reflect Federal and/or State emission controls on all emission source sectors. All non-Federal control measures being relied upon for this Post-1999 ROP SIP have been implemented and have been codified in Georgia's State regulations.

Point Source Control Measures: The point source control measures included in this Post-1999 ROP SIP are required by State regulation and consist of selective catalytic reduction (SCR), overfire air (OFA), and/or low NO_X burners with overfire air (LNBOFA) at the five Georgia Power plants. Controls at two power plans within the 13-county 1-hour ozone nonattainment area, Plant McDonough and Plant Yates, are also reflected in the projected emissions. The controls at these two plants are natural gas technologies required during the ozone season.

Area Source Control Measures: The projected area source emissions reflect Georgia's ban on open burning in the nonattainment area during ozone season. This rule was instituted for the 15% and 9% Plans.

Nonroad Mobile Source Control Measures: The projected 2002 and 2004 nonroad emissions reflect all applicable Federal controls on nonroad mobile sources, as well Georgia's controls on gasoline in the 1-hour ozone nonattainment area.

Mobile Source Control Measures: The projected mobile source emissions inventories described below reflect all Federal and State mobile source control rules, including annual enhanced vehicle inspection and maintenance (I/M) with onboard diagnostics systems checks on 1996 and newer model year cars and light trucks; 2-mode ASM tests on 25-year-old through 1995 model year vehicles; a check for catalytic converter tampering and a gas cap pressure test on all subject vehicles; low-sulfur and low (7.0 pounds per square inch) Reid Vapor Pressures gasoline; Stage II gasoline vapor recovery; the Federal Motor Vehicle Control Program, including Tier 1 and (beginning with 2004 models) Tier 2 tailpipe standards; the National Low Emission Vehicle (NLEV) program; and technician training and certification.

Projected Emissions Overview: With the exception of mobile sources and nonroad sources, which were explicitly modeled for each target year, 2002 and 2004 emissions were projected by applying projection factors to 1999 emissions inventories. The projection factors were produced using EPA's Economic Growth Analysis System (EGAS) software, Version 4.0.

Projected 2002 Emissions Summary: Projected 2002 emissions reflecting the control measures described above are summarized in Table 12:

TABLE 12.—2002 PROJECTED NO_X EMISSIONS

	NO_X emissions (tpd)				
	Point	Area	Nonroad	Mobile	Total
2002 Projected Inventory	68.1	49.8	105.7	364.5	588.1
Fiver Power Plants	321.6	.....	.....	.....	321.6
Total	389.7	49.8	105.7	364.5	909.7

The projected 2002 NO_X emissions of 909.7 tpd are below the 2002 Target Level Emissions of 940.6 tons of NO_X per day. "Excess" NO_X reductions, the amount by which the projected emissions are below the target level, total 30.9 tpd in 2002.

Projected 2004 Emissions Summary: The projected 2004 NO_X emissions reflecting the control measures described above are summarized in Table 13:

TABLE 13.—2004 PROJECTED NO_X EMISSIONS

	NO_X emissions (tpd)				
	Point	Area	Nonroad	Mobile	Total
2004 Projected Inventory	85.5	50.8	105.0	318.2	559.5
Five Power Plants	176.7	.....	.....	.....	176.8
Total	262.2	50.8	105.0	318.2	736.2

The projected 2004 NO_X emissions of 736.2 tpd are below the 2004 Target Level Emissions of 854.7 tons of NO_X per day. There are 118.5 tpd of excess NO_X reductions in 2004.

Emissions Projection Methodology by Source Category

Point Source Emissions Projections: There are two major types of point sources: electric generating unit (EGU) point sources and all other (non-EGU) point sources. For the 2002 Projected Inventory, emissions from EGU point sources were obtained from actual emissions data reported by Georgia

Power Company to EPA's Continuous Emissions Monitoring System (CEMS) database. Note that these actual EGU data for 2002 reflect the effects of controls in operation on several units at Georgia Power's Plants Bowen and Hammond during the 2002 ozone season. Non-EGU point source emissions projections for 2002 were developed by applying projection factors to 1999 point source emissions from the 13-county Atlanta 1-hour ozone nonattainment area. The nonattainment area point source emissions were from GAEPD's 1999 Periodic Emissions Inventory (PEI). The projection factors used to develop non-EGU point source emissions for 2002 were from EGAS.

Point source emissions inventories for 2004 were developed by applying EGAS projection factors to 1999 point source emissions from the 13-county Atlanta 1-hour ozone nonattainment area and from the five power plants outside the 1-hour ozone nonattainment area. The non-EGU point source emissions were from the 1999 PEI. The 1999 EGU point source emission, including those for the five power plants were from the CEMS database.

The 2002 and 2004 point source emissions from the 13-county 1-hour ozone nonattainment area and from the five power plants outside that area are shown in Table 14.

TABLE 14.—PROJECTED POINT SOURCE NO_X EMISSIONS

	Point source NO_X emissions (tpd)	
	2002	2004
13-County Point Source Totals	68.1	85.5
Plant Bowen	88.1	21.7
Plant Branch	71.9	53.7
Plant Hammond	22.2	13.7
Plant Scherer	79.8	76.8
Plant Wansley	59.7	10.8
Grand Total	389.7	262.2

Area Source Emissions Projections: Area source emissions inventories for 2002 and 2004 were developed by applying EGAS projection factors to area source emissions for the 13-county Atlanta 1-hour ozone nonattainment area from the 1999 PEI.

Nonroad Mobile Source Emissions Projections: Nonroad mobile source emissions, with the exception of those from aircraft and locomotives, were calculated using EPA's NONROAD Draft 2002 emissions model (Version 2.2.0). The NONROAD model reflects the effects of all federal controls, and of Georgia gasoline, on nonroad sources of emissions.

Growth in emissions from aircraft and locomotives was projected by applying EGAS projection factors to 1999 PEI emissions from these sources.

Mobile Source Emissions: The highway mobile emissions for the 13-country 1-hour ozone nonattainment area were developed using the MOBILE6.2 emission factor model and Atlanta Regional Commission's (ARC) link-based emissions estimation procedure. The projected mobile source emissions inventories reflect all Federal and State mobile source control rules, including enhanced I/M, Stage II vapor recovery, and Federal tailpipe standards.

One adjustment had to be made to the calculated tpd emissions inventories to arrive at the final motor vehicle emissions inventories. This adjustment accounts for the loss of credit from a State rule allowing exemption from vehicle inspection and maintenance for cars 10 years old or older driven fewer than 5,000 miles per year and owned by persons 65 years old or older. It was estimated that this senior I/M exemption increased VOC and NO_X emissions by 0.39 and 0.11 tpd, respectively, in 2002. The exemption is predicted to increase VOC and NO_X emissions by 0.24 and 0.09 tpd, respectively in 2004.

MVEB: ROP plans are control strategy SIP revisions. As such, they establish MVEB. A motor vehicle emissions budget is described in EPA's transportation conformity rule as "* * * the implementation plan's estimate of future [motor vehicle] emissions." Such budgets establish caps on motor vehicle emissions; projected emissions from transportation plans and programs must be equal to or less than these caps for a positive conformity determination to be made.

Section 93.118(e)(4)(iv) of the transportation conformity rule requires that the "motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance. * * *"

Section 93.118(e)(4)(v) of the transportation conformity rule requires that "the motor vehicle emission budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan. * * *"

Establishment of Updated 2004 MVEB for the Atlanta 1-hour Ozone Nonattainment Area: In preparation for this Post-1999 ROP Plan, GAEPD has been working closely with the ARC over the past year to develop the best possible estimates of mobile source emissions for the 13-county Atlanta nonattainment area. Mobile source inventories for 2004 were developed using the latest available planning assumptions, the most recent recalibrated travel demand model, and EPA's latest motor vehicle emission factor model, MOBILE6.2. The 2004 mobile source emissions inventories developed for this Post-1999 ROP Plan are the basis for new NO_X and VOC budgets for 2004, ensuring that these new MVEB are "consistent with applicable requirements for reasonable further progress" and "consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision."

Although the emissions reductions being relied upon for this Post-1999 ROP Plan are from NO_X controls alone, a 2004 inventory of mobile source VOC emissions was also developed to provide an updated VOC budget that is consistent with this reasonable-further-progress plan and that reflects all latest planning assumptions. GAEPD worked with ARC to develop a VOC emissions inventory for mobile sources using the

ARC's link-based emissions estimation procedure. This mobile source VOC inventory reflects the most recent planning assumptions available and the use of updated travel demand, emissions, and emission factor models. Updating the VOC budget prevents a situation in which a transportation conformity determination must be made against an updated NO_X budget established in this Post-1999 ROP Plan, and against a VOC budget established in the 15% Plan using outdated planning assumptions. The updated VOC emissions inventory is also more conservative (*i.e.*, sets a lower budget) than the previously established VOC budget from the 15% Plan (183.12 tons of VOC per day) and therefore does not interfere with that reasonable-further-progress plan.

The methodology used to calculate the highway mobile source emissions on which the updated 2004 MVEB are based is discussed below.

The MOBILE6.2 motor vehicle emission factor model was used to calculate 2004 VOC and NO_X emission factors with all proposed 2004 mobile source control rules in place. These controls include: annual enhanced I/M and onboard diagnostics system checks on 1996 and newer model year vehicles; 2-mode ASM tests on 25-model-year-old through 1995 vehicles; a check for catalytic converter tampering on all subject vehicles; low-sulfur and low (7.0 pounds per square inch) Reid Vapor Pressure gasoline; Stage II gasoline vapor recovery; the Federal Motor Vehicle Control Program, including Tier 1 and (beginning with 2004 models) Tier 2 tailpipe standards; the National Low Emission Vehicle (NLEV) program; and technician training and certification. The emission factors resulting from the MOBILE6.2 runs were used with ARC's link-based emissions estimation procedure to calculate 2004 tpd emissions in the following manner:

—For each of four times of day (a.m. peak, midday, p.m. peak, and night), the HPMS–adjusted and summer-adjusted 2004 VMT from each link in ARC's travel demand model were multiplied by the 2004 MOBILE6.2 emission factor at the average speed closest to the speed of that link.

—Emissions from all the links and all four time periods were summed together to get grams per day inventories, which were divided by 907,180 to convert from grams per day to tpd.

These mobile source inventories reflect the most up-to-date mobile modeling assumptions, including 2004 VMT projected from a state-of-the-art travel demand model for the 13 counties and July 2004 emission factors from EPA's latest mobile source emission factor model, MOBILE6.2. The same mobile source control rules reflected in Georgia's attainment demonstration were modeled for this Post-1999 ROP Plan. Note that although the attainment demonstration also relied on estimated emissions reductions attributable to the Partnership for a Smog-free Georgia (PSG), a voluntary mobile source emission reduction program, no PSG reductions are being relied upon for this Post-1999 ROP Plan.

Table 15 sums the calculated emissions inventories and the senior exemption emissions increases.

TABLE 15.—TOTAL 2004 MVEB

	VOC (tpd)	NO_X (tpd)
2004 Mobile Emissions Subtotal (MOBILE6.2 results)	160.56	318.15
Senior I/M Exemption Increases	+0.24	+0.09
Total 2004 MVEB	160.80	318.24

This Post-1999 ROP SIP establishes 2004 MVEBs of 160.80 and 318.24 tpd, VOC and NO_X, respectively, for the 13-county Atlanta 1-hour ozone nonattainment area. Interagency consultation among the relevant agencies occurred during the development of these MVEB and prior to the submittal of this Post-1999 ROP SIP.

The MVEBs established by this Post-1999 ROP SIP are based on new estimates of VMT and speeds from updated, state-of-the-art travel demand and link-level emissions estimation models; on a newer and more accurate motor vehicle emission factor model (MOBILE6.2 instead of MOBILE5); and on an updated registration distribution by age developed using registration data obtained from R.L. Polk & Company. These MVEBs are the most accurate estimates of motor vehicle emissions developed, to date, for the Atlanta ozone nonattainment area.

Implementation Schedule: All control measures being relied on for this plan were implemented no later than May 1, 2003, with the exception of the final phase of Georgia's low-sulfur gasoline marketing rule, implemented September 16, 2003.

Milestone Failure Contingencies: As part of this Post-1999 ROP Plan, Georgia is required to include a contingency plan identifying additional controls to be implemented in the event of a milestone failure. Contingency measures must be fully adopted rules or measures that will take effect without further action by the State or EPA if an area fails to make reasonable further progress by the applicable date. As discussed above, and consistent with Georgia's 9% Plan, this Post-1999 ROP SIP relies solely on reduction in NO_X emissions. The contingency plan is also for NO_X only.

EPA guidance suggests that a contingency plan should include 3 percent of the 1990 Adjusted Baseline Inventory's emissions. The 1990 Adjusted-to-2004 Baseline NO_X Inventory is 1132.1 tpd (*see* Table 5); a 3 percent contingency would be 34.0 NO_X tpd:

$1132.1 \times 0.03 = 34.0$

This Post-1999 ROP Plan identifies excess 2004 NO_X reductions of 118.5 tpd. The 3 percent contingency, if needed, can be met with these excess NO_X reductions.

Reporting Requirements: All of the control measures being relied upon for the success of this Post-1999 ROP SIP are already in place. Georgia Power's compliance with the State rule regulating NO_X emissions from large EGU point sources is reflected in the emissions data they report to EPA's CEMS clearinghouse. This information can be retrieved here:

2002 data:

http://www.epa.gov/airmarkets/emissions/prelimarp/02q4/ozone02x.zip.

1999 data:

http://cfpub.epa.gov/gdm/index.cfm?fuseaction=prepackaged.select&CFID=15438597&CFTOKEN=63777112.

Conclusions: The emission controls being relied upon for this Post-1999

ROP SIP were found to be more than sufficient to reduce overall NO_X emissions by the required amounts and also to offset all of the growth in NO_X emissions projected to occur between 1999 and 2002, and between 2002 and 2004. Projected emissions for 2002 and 2004 are below the respective target levels, as shown in Table 16. "Excess" NO_X reductions, the amount by which the projected emissions are below the target level, total 30.9 tpd in 2002 and 118.5 tpd in 2004.

TABLE 16.— NO_X TARGET LEVELS AND PROJECTED EMISSIONS FOR THE POST-1999 ROP

Year	NO_X emissions (tpd)		
	Target NO_X level	Projected NO_X inventory	Excess NO_X reductions
2002	940.6	909.7	30.9
2004	854.7	736.2	118.5

III. Proposed Action

Today, EPA is proposing to approve Georgia's Post-1999 ROP Plan because the Plan meets the requirements of the CAA. As part of this approval, EPA is approving the 2004 VOC MVEB of 160.8 tpd and the 2004 NO_X MVEB of 318.24 tpd. For transportation conformity purposes these 2004 MVEBs will be applicable on the date of final rulemaking of this Post-1999 ROP SIP.

IV. Status of EPA's Transportation Conformity Adequacy Determination

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*e.g.*, reasonable further progress SIPs such as Rate of Progress SIPS) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portion of the total allowable emissions allocated to highway and transit vehicle use and emissions. The MVEBs serve as a ceiling on emissions form an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise MVEBs in the SIP.

Under Section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*e.g.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. Under the transportation conformity rule, at 40 CFR part 93, projected emissions from transportation plans and programs must be equal to or less than the MVEBs for the area. If a transportation plan does not "conform," most projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

Until an MVEB in a SIP submittal is approved by EPA, it cannot be used for transportation conformity purposes unless EPA makes an affirmative finding that the MVEBs contained therein are "adequate." Once EPA affirmatively finds the submitted MVEBs adequate for transportation conformity purposes, those MVEBs can be used by the State and Federal agencies in determining whether proposed transportation projects "conform" to the SIP even though EPA approval of the SIP revision containing those MVEBs has not yet been finalized. EPA's substantive criteria for determining "adequacy" of MVEBs in submitted SIPs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining "adequacy" of MVEBs in submitted SIPs, consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs is set out in EPA's May 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance is incorporated into EPA's June 30, 2003, EPA proposed rulemaking entitled "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (68 FR 38974). EPA follows this guidance in making its adequacy determinations.

Georgia's Post-1999 Rate-of-Progress SIP for the Atlanta 1-hour ozone nonattainment area VOC and NO_X MVEBs for the year 2004. The availability of this SIP submission with these 2004 MVEBs was announced for public comment on EPA's adequacy Web page at: *http://www.epa.gov/otaq/transp/conform/currsips.htm*. The EPA public comment period on adequacy of the 2004 MVEBs for the Atlanta 1-hour ozone nonattainment area closed on February 5, 2004. Following a thorough review of all public comments received and an evaluation of whether the adequacy criteria have been met, EPA will make its adequacy determination. If EPA makes its adequacy determination in the final rulemaking on this ROP SIP revision, and if EPA concludes, after reviewing any comments submitted, that Georgia's proposed new 2004 NO_X and VOC MVEBs are adequate, then the new 2004 MVEBs will be applicable for transportation conformity determinations on the date of final rulemaking of an EPA approval of Georgia's ROP SIP revision.

V. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under R04–OAR–2004–GA–0001. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to

schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's Regional Material EDocket (RME) system, a part of EPA's electronic docket and comment system. You may access RME at *http://docket.epa.gov/rmepub/index.jsp* to review associated documents and submit comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number.

You may also access this **Federal Register** document electronically through the Regulations.gov, Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register,** the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

3. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency: Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone: (404) 363–7000.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking R04–OA–2004–GA–0001" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contract 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 Regional Material EDocket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Regional Material EDocket (RME).* Your use of EPA's RME to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to RME at *http://docket.epa.gov/rmepub/index.jsp*, and follow the online instructions for submitting comments. To access EPA's RME from the EPA Internet Home Page, select "Information Sources," "Dockets," "EPA Dockets," "Regional Material EDocket." Once in the system, select "quick search," and then key in RME Docket ID No. R04–OAR–2004–GA–0001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *martin.scott@epa.gov*, please include the text "Public comment on proposed rulemaking R04–OAR–2004–GA–0001" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Regulations.gov. Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identiy, e-mail address, or other contact information unless you provide it in the body of your comment.

iv. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Mr. Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking R04–OAR–2004–GA–0001" in the subject line on the first page of your comment.

3. Deliver your comments to: Mr. Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part of or all of that information as CBI (if your submit CBI or CD ROM mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any

information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public region rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

VI. Statutory and Executive Order Reviews

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: April 26, 2004.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 04–10101 Filed 5–5–04; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040421127–4127–01; I.D. 051403A]

RIN 0648–AR10

Atlantic Highly Migratory Species; Atlantic Trade Restrictive Measures

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

ACTION: Proposed rule, request for comments, notice of public hearing.

SUMMARY: NMFS proposes to adjust the regulations governing the trade of tuna and tuna-like species in the North and South Atlantic Ocean to implement recommendations adopted at the 2002 and 2003 meetings of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The proposed rule would lift or implement import prohibitions on Honduras, St. Vincent and the Grenadines, Belize, Sierra Leone, Bolivia, and Georgia for bigeye tuna, bluefin tuna, and swordfish. The proposed rule would also prohibit imports from vessels on the ICCAT illegal, unreported, and unregulated fishing list and from vessels which are not listed on ICCAT's record of vessels larger than 24 meters in length that are authorized to fish in the Convention Area. Additionally, the proposed rule would require issuance of a chartering permit before a vessel begins fishing under a chartering arrangement.

DATES: Written comments on the proposed rule must be received by 5 p.m. on June 21, 2004.

The hearing date is: May 19, 2004, from 2 to 4 p.m., Silver Spring, MD.

ADDRESSES: The meeting location is: NOAA Science Center, Building 4, Silver Spring, MD 20910

Comments should be sent to, and copies of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from

Christopher Rogers, Chief, Highly Migratory Species Management Division F/SF1, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via facsimile (fax) to 301–713–1917 and by email. The mailbox address for providing e-mail comments is *RIN0648.AR10@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier RIN0648.AR10. Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http//www.regulations.gov*. Copies of the EA/RIR/IRFA are also available from the Highly Migratory Species Management Division website at *www.nmfs.noaa.gov/sfa/hms*.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt, by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish and tuna fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the promulgation of regulations as may be necessary and appropriate to carry out ICCAT recommendations. Trade-related ICCAT recommendations in calendar years 2002 and 2003 include but are not limited to, 02–16, 02–17, 02–18, 02–19, 02–20, 02–21, 02–22, 02–23, 03–16, 03–17, and 03–18.

Trade Measures

In order to conserve and manage bigeye tuna (BET), bluefin tuna (BFT), and swordfish (SWO) in the Atlantic Ocean, ICCAT adopted several recommendations at its 2002 and 2003 meetings regarding prohibitions or the lifting of prohibitions on the import of these species. ICCAT concluded, based on available information, that Sierra Leone, Bolivia, and Georgia were engaged in fishing activities that diminish the effectiveness of ICCAT conservation and management measures. Thus, ICCAT recommended that Contracting Parties (i.e., any member of the United Nations or any specialized agency of the United Nations that has signed on to the International Convention for the Conservation of Atlantic Tunas) prohibit the import of Atlantic BET, BFT, and SWO from Sierra Leone and Atlantic BET from Bolivia and Georgia. In this action, NMFS proposes to prohibit such imports from Sierra Leone, Bolivia, and Georgia. Upon determination by ICCAT that Sierra Leone, Bolivia, or Georgia has brought its fishing practices into consistency with ICCAT conservation and management measures, NMFS would take action to remove the appropriate import restrictions.

At its 2002 meeting, ICCAT also recommended that several import prohibitions be lifted. One of these recommendations included removing the import prohibition of Atlantic BET, BFT, and SWO from Honduras. In this action, NMFS proposes to lift the import restrictions on Atlantic BFT and SWO from Honduras implemented on August 21, 1997 (62 FR 44422), and December 12, 2000 (65 FR 77523), respectively. NMFS did not finalize the 2000 ICCAT recommendation regarding BET imports from Honduras because ICCAT did not reach consensus in 2001 regarding whether Honduras had brought its fishing practices into conformity with ICCAT conservation and management measures (67 FR 70023, November 20, 2002). Another 2002 recommendation would lift the import prohibitions regarding Atlantic BET, BFT, and SWO from Belize and Atlantic BET from St. Vincent and the Grenadines. The proposed rule would relieve the restrictions imposed on November 20, 2002 (67 FR 70023), for BET from Belize, St. Vincent, and the Grenadines; August 21, 1997 (62 FR 44422), for BFT from Belize and Honduras; and December 12, 2000 (65 FR 77523), for SWO from Belize and Honduras.

Vessel Chartering

At its 2002 meeting, ICCAT addressed the practice of charter or chartering arrangements. For the purposes of this proposed rule, a charter or chartering arrangement is an agreement between a vessel and a foreign entity (e.g., country, business, government, person) to fish in foreign waters without reflagging the vessel. ICCAT recommended that chartering and flag Contracting Parties adopt several requirements to ensure compliance by chartered vessels with relevant ICCAT conservation and management measures. The recommendation states that at the time of the chartering arrangement, the chartering and flag Contracting Parties shall provide specific information concerning the charter to the ICCAT Executive Secretary, including vessel details, target species, duration, and consent of the flag Contracting Party or Cooperating non-Contracting Party, Entity or Fishing Entity. Cooperating non-Contracting Party, Entity or Fishing Entity is a special status that ICCAT created; Chinese Taipei participates at ICCAT under this status. The ICCAT Executive Secretary should also be notified upon termination of the charter. The recommendation states that, unless specifically provided in the chartering arrangement, and consistent with relevant domestic law and regulation, catches taken pursuant to the arrangement shall be unloaded exclusively in the ports of the chartering Contracting Party/foreign entity or under its direct supervision. NMFS uses the term "offload" in its regulations to refer to the activity of unloading or removing fish from a vessel. Such catches should be counted against the quota of the chartering Contracting Party but both the chartering and flag countries shall record the catch amounts separately from catches taken by other vessels. Chartered vessels shall not be authorized to use the quota or entitlement of the United States.

In order to implement the chartering recommendations of ICCAT, NMFS proposes to require that vessel owners apply for and obtain a chartering permit before fishing under a chartering arrangement. Having a chartering permit would not obviate the need to obtain a fishing license, permits, or other authorizations issued by the chartering nation in order to fish in foreign waters, or to have other authorizations such as a High Seas Fishing Compliance Act Permit, 50 CFR 300.10 *et seq.* A vessel shall not be authorized to fish under more than one chartering arrangement at the same time. NMFS will issue permits only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

ICCAT also recommended that observers be aboard at least 10 percent of the chartered vessels or during 10 percent of the fishing time. NMFS would have the authority to place observers onboard a chartered vessel pursuant to 50 CFR 635.7.

Illegal, Unreported, and Unregulated (IUU) Fishing

In an effort to prevent and deter IUU fishing, ICCAT adopted three recommendations (02–23, 02–22, and 03–16). Recommendations 02–23 and 02–22 outline processes for identifying vessel lists, ICCAT adoption of the lists, and revisions via the submission of provisional lists to ICCAT for further consideration. Recommendation 02–23 establishes a list of vessels presumed to have carried out IUU fishing activities in the ICCAT convention area (also referred to as "negative list"). Each year, Contracting Parties shall transmit to the ICCAT Executive Secretary a list of vessels suspected of IUU fishing, accompanied by supporting evidence.

Upon adoption of the list of IUU vessels, Contracting Parties shall enact measures to prevent vessels flying their flag from transshipping with a vessel on the negative list, prevent vessels on the negative list from landing or transhipping in their ports, prohibit the chartering of an IUU vessel, refuse to grant their flag to an IUU vessel, and prohibit imports, landing, or transshipment of tuna and tuna-like species from IUU vessels.

Recommendation 02–22 establishes a record of vessels larger than 24 meters in length that are authorized to fish for tuna and tuna-like species in the Convention Area (also referred to as "positive list"). To create this record, Contracting Parties shall submit a list to the ICCAT Executive Secretary containing information relating to its approved vessels. ICCAT recommended that the Contracting Parties take measures to prohibit the fishing for, the retaining on board, the transshipment, and landing of tuna and tuna-like species by vessels larger than 24 meters in length which are not listed on the positive list.

This proposed rule would implement the measures associated with both these lists. The United States submitted a positive list to ICCAT on July 22, 2003, and plans to update this list again upon request by ICCAT. Because the United States does not know of any domestic vessels that participate in IUU fishing, the United States did not submit a negative list to ICCAT.

ICCAT further recommended at its 2003 meeting that Contracting Parties prohibit landings from fishing vessels, placing in cages for farming and/or the transshipment within their jurisdiction of tunas or tuna-like species caught by IUU fishing activities (Recommendation 03–16). This proposed rule would also implement this additional measure to prevent and deter IUU fishing.

Public Hearings and Special Accommodations

NMFS will hold a public hearing (see **DATES** and **ADDRESSES**) to receive comments from fishery participants and other members of the public regarding these proposed amendments. This hearing will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt at (301) 713–2347 at least five days prior to the hearing date. For individuals unable to attend a hearing, NMFS also solicits written comments on the proposed rule (see **DATES** and **ADDRESSES**).

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries has preliminarily determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

A June 14, 2001, Biological Opinion (BiOp) found that the U.S. pelagic longline fishery was likely to jeopardize loggerhead and leatherback sea turtles and that other HMS fisheries were not likely to jeopardize these species. A final rule published July 9, 2002 (67 FR 45393), implemented the reasonable and prudent alternative required by that BiOp. NMFS recently reinitiated consultation for the pelagic longline fishery because the incidental take statement for leatherback and loggerhead sea turtles was exceeded in 2001 and 2002.

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have approved coastal zone management programs. Letters have been sent to the relevant states asking for their concurrence.

NMFS has prepared a regulatory impact review and an initial regulatory flexibility analysis that examine the impacts of this proposed action. The purpose of this proposed rulemaking is to implement the 2002 and 2003 ICCAT recommendations regarding trade measures consistent with the HMS FMP, the Magnuson-Stevens Act, ATCA, and other domestic regulations. As this proposed rule impacts the trade and importation of HMS (e.g., tuna and tuna-like species) in the United States and chartering arrangements with foreign entities, the regulations would not directly impact a specific domestic fishery. However, the proposed measures could impact HMS dealers and vessels that participate in chartering arrangements, all of which NMFS considers to be small entities. In December 2003, there were approximately 516 and 302 dealer permits issued for tuna and SWO, respectively. NMFS estimates that less than 10 domestic vessels may participate in chartering arrangements.

To address the 2002 and 2003 ICCAT recommendations regarding trade measures, two alternatives were prepared: a preferred alternative to implement the ICCAT recommendations and a no action alternative that would not implement the recommendations.

The preferred alternative proposed by this proposed rule (imposing or lifting trade restrictions, establishing chartering notification and permit requirements, and implementing measures designed to prevent IUU fishing and fishing by unauthorized large scale fishing vessels) is not expected to have significant economic or social impacts. By prohibiting the import of BET, BFT, and SWO from Sierra Leone and BET from Bolivia and Georgia, NMFS could reduce the economic benefits of importers and dealers. Conversely, by lifting the trade restrictions on imports of BFT and SWO from Honduras and lifting the prohibition of imports of BET from Belize and St. Vincent and the Grenadines and BFT and SWO from Belize, NMFS could provide economic benefits to U.S. dealers and importers. However, because current and past import levels of these fish species from these countries are low or nonexistent, NMFS does not anticipate major positive or negative economic impacts as a result of either implementing the preferred alternative or maintaining existing bans should adoption of the no action alternative occur.

The chartering permit is not expected to significantly increase the administrative burden to the vessel owners or result in significant economic impacts. The application process requires the provision, through mail or facsimile, of information, including but not limited to name and registration of the vessel, name and address of the owner, description of the vessel, targeted species, quota allocated to the chartering party, and the duration of the chartering arrangement. Additional information such as copies of fishing licenses, permits, other authorizations (e.g., High Seas Fishing Compliance Act Permit, 50 CFR 300.10, and documentation regarding the legal establishment of the chartering company will be requested. A vessel shall not be authorized to fish under more than one chartering arrangement at the same time. NMFS will issue permits only if it is determined that the chartering arrangement is in conformance with ICCAT's conservation and management programs. NMFS does not anticipate major economic impacts to domestic vessels as a result of a permit denial, given that these vessels would continue to be able to fish in domestic waters for HMS and may decide to sell HMS domestically or export product to other countries depending upon which market has the higher product price. Given that no

chartering permits have been issued in the fishery to date, NMFS does not anticipate any economic impacts to domestic vessels as a result of taking no action.

NMFS does not anticipate any significant impacts to U.S. entities from the proposed prohibition on the import of tuna and tuna-like species from vessels known to be IUU fishing or from unauthorized large scale fishing vessels. Currently, NMFS does not have specific information concerning the amount of HMS imported from such vessels. However, NMFS believes that the amount of HMS imported from these types of vessels is insignificant, and therefore does not expect any major economic impacts associated with implementation of the proposed management measure or with no action.

NMFS considers all HMS vessel and dealer permit holders to be small entities, and thus, in order to meet the objectives of this proposed rule and address the management concerns at hand, NMFS cannot exempt small entities or change the reporting requirements for small entities. NMFS is proposing these measures to comply with ICCAT recommendations which are negotiated between many countries and are therefore not easily adjusted or modified. As such, the use of performance rather than design standards and the simplification of compliance and reporting requirements under this proposed rule are not practicable. Furthermore, this action does not duplicate, overlap, or conflict with any other relevant Federal rules.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The chartering application and notification requirements for vessels entering a chartering arrangement have been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 40 minutes per application and 5 minutes per notification upon termination of the chartering arrangement. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether 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; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of collecting the information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the HMS Management Division at the **ADDRESSES** above, and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: April 30, 2004.

Rebecca Lent

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

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2 the definition of "Tuna or tuna-like" is added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Tuna or tuna-like means the Scombriformes (with the exception of families Trichiuridae and Gempylidae and the genus *Scomber*) and such other species of fishes that are regulated by ICCAT in the Atlantic Ocean.

* * * * *

3. In § 635.5, paragraph (a)(6) is added to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(6) *Chartering Arrangements.* (i) For the purposes of this section, a chartering arrangement means any contract, agreement, or commitment between a vessel owner and a foreign entity (e.g., government, company, person) under which the possession or services of a vessel are secured for a period of time for fishing targeting Atlantic HMS. Chartered vessels do not generally change registration (flag) to fish under another country's registration. Chartering arrangements under this part do not include bareboat charters under which a vessel enters into a fishing agreement with a foreign entity, changes registration to fish under another country's registration then, once the agreed-upon fishing is completed, reverts back to the vessel's original registration.

(ii) Before fishing under a chartering arrangement, the owner of a fishing vessel subject to U.S. jurisdiction must apply for and obtain a chartering permit as specified in § 635.32 (e) and (f). If a chartering permit is issued, the vessel owner must submit catch information as specified in the terms and conditions of that permit. Catches will be recorded and counted against the applicable quota of the chartering Contracting Party and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering Contracting Party or offloaded under the direct supervision of the chartering Contracting Party.

(iii) If the chartering arrangement terminates before the expiration of the charter permit, the vessel owner must notify NMFS in writing upon termination of the chartering arrangement.

* * * * *

4. In § 635.32, paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively, and revised; and paragraph (a) is revised; and a new paragraph (e) is added to read as follows:

§ 635.32 Specifically authorized activities.

(a) *General.* Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize for the conduct of scientific research, the acquisition of information and data, the enhancement of safety at sea, the purpose of collecting animals for public education or display, the investigation of bycatch, economic discard and regulatory discard, or for chartering arrangements, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable

regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, display permit, or chartering permit issued in response to requests for authorization under this section. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization. Inspection requirements specified in § 635.5(e) of this part apply to the owner or operator of a fishing vessel that has been issued a exempted fishing permit, scientific research permit, display permit, or chartering permit.

* * * * *

(e) *Chartering permits.* (1) For activities consistent with the purposes of this section, § 635.5(a), and § 600.745(b)(1) of this chapter, NMFS may issue chartering permits for record keeping and reporting purposes. An application for a chartering permit must include all information required under § 600.745(b)(2) of this chapter and, in addition, written notification of: the species of fish covered by the chartering arrangement and quota allocated to the chartering Contracting Party; duration of the arrangement; measures adopted by the chartering Contracting Party to implement ICCAT chartering provisions; copies of fishing licenses, permits, and/or other authorizations issued by the chartering Contracting Party for the vessel to fish under the arrangement; a copy of the High Seas Fishing Compliance Act Permit pursuant to 50 CFR 300.10; and documentation regarding the legal establishment of the chartering company.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid chartering permit is required to fish for, take, retain, or possess tuna or tuna-like species under chartering arrangements as specified in § 635.5(a)(6). A valid chartering permit must be on board the harvesting vessel, must be available when tuna or tuna-like species are landed, and must be presented for inspection upon request of an authorized officer. A chartering permit is valid for the duration of the chartering arrangement or until the expiration date specified on the permit, whichever comes first.

(3) To be considered complete, an application for a chartering permit for a vessel must include all information specified in § 600.745(b)(2) and in § 635.32(e) and (f).

(4) Charter permit holders must submit logbooks and comply with reporting requirements as specified in § 635.5. NMFS will provide specific conditions and requirements in the chartering permit, so as to ensure consistency, to the extent possible, with laws of foreign countries, the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, as well as ICCAT recommendations.

(5) Observers may be placed on board vessels issued chartering permits as specified under § 635.7.

(6) NMFS will issue a chartering permit only if it determines that the chartering arrangement is in conformance with ICCAT's conservation and management programs.

(7) A vessel shall be authorized to fish under only one chartering arrangement at a time.

(8) All chartering permits are subject to sanctions and denials as indicated under § 635.4(a)(6).

(f) *Applications and renewals.* Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register**, on an annual or, as necessary, more frequent basis, notification of previously authorized exempted fishing, scientific research, public display, or chartering activities and to solicit public comment on anticipated EFP, SRP, LOA, public display, or chartering permit requests. Applications for EFP, SRP, public display, or chartering permit renewals are required to include all reports specified in the applicant's previous permit including the year-end report, all delinquent reports permits issued in prior years, and all other specified information. In situations of delinquent reports, renewal applications will be deemed incomplete and a permit will not be issued under this section.

(g) *Terms and conditions.* For EFPs, SRPs, and public display permits: (1) Written reports on fishing activities and disposition released under a permit issued under this section, must be submitted to NMFS, at an address designated by NMFS, within 5 days of the fishing activity, without regard to whether the fishing activity occurs in or outside the EEZ. Also, an annual written summary report of all fishing activities and disposition of all fish captured under the permit must be submitted to NMFS, at an address designated by NMFS, within 30 days after the expiration date of the permit. NMFS will provide specific conditions and requirements as needed, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

5. In § 635.45, paragraphs (a), (b), and (c) are revised and paragraphs (d), (e), and (f) are added to read as follows:

§ 635.45 Products denied entry.

(a) All shipments of Atlantic swordfish, or its products, in any form, harvested by a vessel under the jurisdiction of Sierra Leone will be denied entry into the United States. It is a rebuttable presumption that any shipment containing swordfish, or its products, offered for entry or imported into the United States has been harvested by a vessel or vessels of the exporting nation.

(b) All shipments of Atlantic bluefin tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Equatorial Guinea or Sierra Leone will be denied entry into the United States. It is a rebuttable presumption that any shipment containing bluefin tuna, or its products, offered for entry or imported into the United States has been harvested by a vessel or vessels of the exporting nation.

(c) All shipments of Atlantic bigeye tuna, or its products, in any form, harvested by a vessel under the jurisdiction of Bolivia, Cambodia, Equatorial Guinea, Sierra Leone, or Georgia will be denied entry into the United States. It is a rebuttable presumption that any shipment containing bigeye tuna, or its products, offered for entry or imported into the United States has been harvested by a vessel or vessels of the exporting nation.

(d) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel larger than 24 meters in length overall that is not listed on the ICCAT record of authorized vessels will be denied entry into the United States.

(e) All shipments of tuna or tuna-like species, or their products, in any form, harvested in the ICCAT convention area by a fishing vessel listed on the ICCAT record as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

(f) All shipments of tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing will be denied entry into the United States.

6. In § 635.71, paragraphs (a)(2), (a)(6), and (b)(26) are revised; and paragraphs (a)(41) through (a)(47) and paragraphs (b)(30) and (e)(16) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, SRP, display permit, or chartering permit on board the vessel, as specified in § 635.4 and § 635.32.

* * * * *

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5 and § 635.32 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit, scientific research permit, display permit, or chartering permit issued under § 635.32.

* * * * *

(41) Fail to notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(6).

(42) Count chartering arrangement catches against quotas other than that of the chartering Contracting Party as specified in § 635.5(a)(6).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(6).

(44) Offload chartering arrangement catch in ports other than ports of the chartering Contracting Party or offload catch without the direct supervision of the chartering Contracting Party as specified in § 635.5(a)(6).

(45) Import or attempt to import tuna or tuna-like species harvested from the ICCAT convention area by a fishing vessel larger than 24 meters in length overall that is not listed in the ICCAT record of authorized vessels as specified in § 635.45(d).

(46) Import or attempt to import tuna or tuna-like species harvested by a fishing vessel on the ICCAT illegal, unreported, and unregulated fishing list as specified in § 635.45(e).

(47) Import or attempt to import tuna or tuna-like species, placed in cages for farming and/or transshipment, harvested in the ICCAT convention area and caught by a fishing vessel included on the ICCAT list as engaged in illegal, unreported, and unregulated fishing as specified in § 635.45(f).

(b)* * *

(26) Import a bluefin tuna or bluefin tuna product into the United States from Equatorial Guinea or Sierra Leone other than as authorized in § 635.45(b).

* * * * *

(30) Import a bigeye tuna or bigeye tuna product into the United States from Bolivia, Cambodia, Equatorial Guinea, Sierra Leone, or Georgia other than as authorized in § 635.45(c).

* * * * *

(e)* * *

(16) Import a swordfish or swordfish product into the United States from Sierra Leone other than as authorized in § 635.45(a).

* * * * *

[FR Doc. 04–10256 Filed 5–5–04; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 88
Thursday, May 6, 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

Submission for OMB Review; Comment Request

April 29, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Commodity Credit Corporation's Facility Guarantee Program (FGP).

OMB Control Number: 0551–0032.

Summary of Collection: Under the authority of 7 CFR Part 1493, Subpart C, the Facility Guarantee Program (FGP) offers credit guarantees to facilitate the financing of U.S. manufactured goods and services to improve or establish agriculture infrastructure in emerging markets. Sales under FGP are considered normal commercial sales. The FGP makes available export credit guarantees to encourage U.S. private sector financing of foreign purchase of U.S. goods and services on credit terms.

Need and Use of the Information: The Foreign Agricultural Service (FAS) will collect information to determine eligibility for FGP benefits, the impact on U.S. agricultural trade and to ensure Commodity Credit Corporation (CCC) that all participants have a business office in the U.S. and are not debarred or suspended from participating in government programs. The information requested will provide CCC with adequate information to meet statutory requirements. If the information were not collected, CCC would be unable to determine if export sales under the FGP would be eligible for coverage or, if coverage conformed to program requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 329.

Food and Nutrition Service

Title: The Integrity Program (TIP) Data Collection.

OMB Control Number: 0584–0401.

Summary of Collection: The basis for this data collection and reporting system is Part 246.5 of the Women, Infant, and Children (WIC) Program regulations, which requires State agencies to report annually on their vendor monitoring efforts. The data collected from the States serves as a management tool to provide Congress, OIG senior program managers, as well as the general public, assurances that program funds are spent appropriately and that every reasonable effort is made to prevent, detect and eliminate fraud, waste and abuse.

Need and Use of the Information: The information collected by FNS is used to analyze trends, to identify possible vendor management deficiencies, to formulate program policy and regulations. At the State level, the information is used to provide assurances to the Governor's office, and other interested parties, that WIC issues are being addressed.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 88.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 3,725.

Food and Nutrition Service

Title: Summary Food Service Program Survey.

OMB Control Number: 0584–NEW.

Summary of Collection: The U.S. Department of Agriculture's Food and Nutrition Service (FNS) administers food programs that provide nutritionally balanced meals and snacks for eligible children who are 6 through 18 years of age. The Summer Food Service Program (SFSP), which is administered by FNS, was designed to meet the summer food needs of eligible children who qualify for free or reduced-price breakfasts and lunches during the regular school year. During the summer months, federally funded meals are available through the SFSP at state-approved sites. Of the 15 million eligible children, only about 1.9 million (14%) participated in the SFSP in July 2002. Another 1.4 million of the 15 million eligible students (9%) who attended summer school or year-round schools in July 2002 were served free or reduced-price meals through NSLP. FNS is committed to ensuring adequate nutrition in the summer for children who are eligible for the free or reduced-price breakfast and lunch programs during the regular school year. FNS is interested in determining why children who are eligible for SFSP do not participate in the program.

Need and Use of the Information: FNS will collect information to understand the reasons for the discrepancies in participation rates between the breakfast and lunch programs during the regular school year and the SFSP. The results will enable policy-makers in and out of government to better understand what program initiatives might be effective in

increasing participation rates in SFSP. Without the data collection, FNS does not have the necessary information for developing strategies to increase SFSP participation and to ensure that NLSP and SBP eligible school age children have nutritious meals during the summer months. Also, the research will contribute to an understanding of how the food needs of the non-participants in SFSP are being met in the summer.

Description of Respondents: Individuals or households.

Number of Respondents: 546.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 147.

Cooperative State Research, Education, and Extension Service

Title: Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.

OMB Control Number: 0524–0036.

Summary of Collection: Section 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) requires that a plan of work must be submitted by each institution and approved by the Cooperative State Research, Education, and Extension Service (CSREES) before formula funds may be provided to the 1862 and 1890 land-grant institutions. The plan of work must address critical agricultural issues in the State and describe the programs and project targeted to address these issues using the CSREES formula funds. The plan of work also must describe the institution's multi-state activities as well as their integrated research and extension activities.

Need and Use of the Information: Institutions are required to annually report to CSREES the following: (1) The actions taken to seek stakeholder input to encourage their participation; (2) a brief statement of the process used by the recipient institution to identify individuals or groups who are stakeholders and to collect input from them; and (3) a statement of how collected input was considered. CSREES uses the information to provide feedback to the institutions on how to improve the conduct and the delivery of their programs. Failure to comply with the requirements may result in the withholding of a recipient institution's formula funds and redistribution of its share of formula funds to other eligible institutions.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 75.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 160,860.

Rural Housing Service

Title: Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI).

OMB Control Number: 0575–0180.

Summary of Collection: Congress created the Rural Community Development Initiative (RCDI) in fiscal year 2000 and funds were appropriated under the Rural Community Advancement Program. The intent of the RCDI grant program is to develop the capacity and ability of rural area recipients to undertake projects through a program of financial and technical assistance provided by qualified intermediary organizations. Intermediaries are required to provide matching funds in an amount equal to the RCDI grant. Eligible recipients are private, nonprofit community-based housing and community development organizations and low-income rural communities.

Need and Use of the Information: The Rural Housing Service will collect information to determine applicant/grantee eligibility, project feasibility, and to ensure that grantees operate on a sound basis and use grant funds for authorized purposes. Failure to collect this information could result in improper use of Federal funds.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 146.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Annually, Third party disclosure.

Total Burden Hours: 2,026.

Agricultural Marketing Service

Title: Poultry Market News report.

OMB Control Number: 0581–0033.

Summary of Collection: 7 U.S.C. provides authorization to collect and disseminate marketing information and to provide adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, to aid in the maintenance of farm income and bring about a balance between production and utilization of agricultural products. In 1951, Congress approved a program for the development of Federal-State Market News Services. The Market News Branch headquarters in Washington, DC, is responsible for coordinating the market news program. The mission of market news is to provide current, unbiased, factual information to all members of the nation's agricultural industry, from farmers to retailers.

Need and Use of the Information: Industry participants are provided with up-to-date information on the movement of product and the amount of product in storage on a current basis, so that necessary adjustment in product flow can be made. If this information were collected less frequently, it would result in "stale" data that would be of little to no use to industry and public concerns.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Individuals or households; Farms.

Number of Respondents: 1,710.

Frequency of Responses: Reporting: Monthly; Weekly.

Total Burden Hours: 17,647.

Forest Service

Title: Annual Wildfire Report.

OMB Control Number: 0596–0025.

Summary of Collection: The Cooperative Forestry Assistance Act of 1978 (U.S.C. 2101) requires the Forest Service (FS) to collect information about wildfire suppression efforts by State and local fire fighting agencies in order to support specific congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for State and local fire fighting agencies. The FS works cooperatively with State and local fire fighting agencies to support their fire suppression efforts. FS will collect information using form FS 3100–8, Annual Wildfire Summary Report.

Need and Use of the Information: FS will collect information to determine if the Cooperative Fire Program funds provided to the State and local fire fighting agencies have been used by State and local agencies to improve their fire suppression capabilities. The information collected will be shared with the public about the importance of the State and Private Cooperative Fire Program. FS would be unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program, if the information provided on FS–3100–8 were not collected.

Description of Respondents: Federal Government; State, Local or Tribal Government.

Number of Respondents: 55.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 55.

Rural Business Service

Title: 7 CFR 4279–B, Guaranteed Loan Making—Business and Industry Loans.

OMB Control Number: 0570–0017.

Summary of Collection: The Business and Industry (B&I) program was

legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by the Rural Business Service (RBS) through Rural Development State and sub-State offices serving each State.

Need and Use of the Information: RBS will collect information to determine eligibility and creditworthiness for lenders and borrowers. The information is used by RBS loan officers and approval officials to determine program eligibility and for program monitoring.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 8,544.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 19,761.

Forest Service

Title: Timber Purchasers' Cost and Sales Date.

OMB Control Number: 0596–0017.

Summary of Collection: The Multi-Use Sustained Yield Act of 1960, the Forest Rangeland Renewable Resources Planning Act of 1974, and the National Forest Management Act of 1976, authorizes the Forest Service (FS) to sell forest products and National Forest System timber. FS timber and product appraisers develop advertised timber and product sale prices using residual and transaction evidence method of appraisal. Residual appraisals begin through the collection of production cost data. Transaction evidence appraisals begin with an average of past successful bids by timber purchasers for timber for which the stumpage rate has been adjusted for the timber sale and market conditions at the time. FS collects the data from timber sales and product purchases through submissions by contractors both locally and nationally. There are no forms required for the collection of costs data.

Need and Use of the Information: FS will collect information to verify that the minimum rates returned a fair value to the Government and that the residual and transaction system are a reliable approach to valuing timber and products. The information is also used to assure the accuracy of the residual and transaction system and to develop minimum stumpage rates for small sales or for areas where there is no current sale activity to use for transaction evidence. If the information is not collected, FS would have difficulties in determining if the value received from products really reflects the true market value.

Description of Respondents: Business or other for-profit.

Number of Respondents: 35.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 70.

Agricultural Marketing Service

Title: 7 CFR Part, 70. Regulations for Voluntary Grading of Poultry Products and Rabbit Products.

OMB Control Number: 0581–0127.

Summary of Collection: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services to enable a more orderly marketing of agricultural products so trading may be facilitated and consumers may be able to obtain products graded and identified under USDA programs. Regulations in 7 CFR Part 70 provide for a voluntary program for grading poultry and rabbits on the basis of U.S. classes, standards and grades. The Agricultural Marketing Service (AMS) carries out the regulations, which provide a voluntary program for grading poultry and rabbit products. This program is voluntary where respondents would need to request or apply for the specific service they wish.

Need and Use of the Information: Since the AMA requires that the cost of the service be assessed and collected, there is no alternative but to provide voluntary programs on a fee for service basis and to collect the information needed to establish the costs. Only authorized representatives of the USDA use the information collected to administer the grading services requested by the respondents.

Description of Respondents: Business or other for profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 361.

Frequency of Responses: Reporting: On occasion; Semi-annually; Monthly; Annually; Other (Daily).

Total Burden Hours: 1,753.

Rural Housing Service

Title: 7 CFR 1927–B, "Real Estate Title Clearance and Loan Closing."

OMB Control Number: 0575–0147.

Summary of Collection: Rural Development and the Farm Service Agency are the credit agencies for the Department of Agriculture. They offer a supervised credit program to build family farms, modest housing, sanitary water and sewer systems, essential community facilities, businesses and industries in rural areas. Section 306 of the Consolidated Farm and Rural Development Act (CONTACT), 7 U.S.C. 1926, authorizes RUS to make loans to public agencies, American Indian tribes, and non-profit corporations. The loans fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Section 501 of Title V of the Housing Act provides authorization to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings and to provide decent, safe and sanitary living conditions in rural areas. The Secretary of Agriculture is authorized to prescribe regulations to ensure that these loans made with federal funds are legally secured.

Need and Use of the Information: The approved attorney/title company (closing agent) and the field office staff collect the required information. Forms and or guidelines are provided to assist in the collection, certification and submission of this information. Most of these forms collect information that is standard in the industry. If the information is collected less frequently, the agency would to obtain the proper security position on the properties being taken as security and would have no evidence that the closing agents and agency met the requirements of this regulation.

Description of Respondents: Individuals or households; Business or other for-profit, Not-for-profit institutions; Farms.

Number of Respondents: 41,642.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 28,578.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–10280 Filed 5–5–04; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Off-Highway Vehicle (OHV) Study, Mark Twain National Forest, Madison, WA, and Wayne Counties, MO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of proposed activities within the three OHV Study project areas. The three OHV Study project areas are located on National Forest System lands administered by the Potosi/Fredericktown and Poplar Bluff Ranger Districts is southeast Missouri. The legal descriptions of the three study areas are as follows:

Palmer Study Area—This study area would be located on the Potosi Unit of the Potosi/Fredericktown Ranger District in Washington County, approximately 12 miles southwest of Potosi, Missouri. The legal description is T36N, R1W, Sections 1, 2, 10–15, 22–26, 35, and 36; T36N, R1E, Sections 2–4, 6–11, 14–23, 27, and 30; T37N, R1E, Sections 31–35. This trail system would be managed for a variety of motorized vehicles, including jeeps and dune buggies. There would also be 3 small designated areas for off-road and off-trail riding, totaling approximately 31 acres in the Palmer Study Area. Trailheads and parking ares would also be constructed at some locations.

Cherokee Pass Study Area—This study area would be located on the Fredericktown Unit of the Potosi/Fredericktown Ranger District in Madison County, approximately seven miles south of Fredericktown, Missouri. The legal description is T32N, R6E, Sections, 1, 11–14, 22–26, 35, and 36; T32N, R7E, Sections 3–11, 15–23, 26–34. This trail system would be managed for ATV and equestrian use. Other motorized vehicles such as motorcycles, jeeps, and dune buggies, would not be allowed. Trailheads and parking areas would also be constructed at some locations.

Blackwell Ridge Study Area—This study area would be located on the Poplar Bluff Ranger District in Wayne County, approximately 1½ mile north of Williamsville, Missouri. The legal description is T27N, R4E, Sections 1–4, and 12; T27N, R5E, Sections 5, 6, and 8; T28N, R4E Sections 32–34. This trail system would be managed for ATV and motorcycles. Other motorized four-wheel drive vehicles, jeeps, and dune buggies, would not be allowed.

Trailheads and parking areas would also be constructed at some locations. Approximately 137 miles of trail is being proposed as part of this project. Of this 137 miles, 66 miles are county or Forest Service roads, with an additional 62 miles that exists as unimproved roads on National Forest land. Only about 9 miles of new trail construction is proposed. There are no new stream crossings proposed. Stream crossings used as part of the trail proposal would be on county or Forest Service roads or on historic road locations.

The primary purpose of this project is to study OHV use and users to guide future management options on OHV trail opportunities and use. This study will also evaluate equipment impacts to natural resources. Social impacts, such as customer satisfaction, demographics of trail users, and compatibility between trail users, would also be studied. The Mark Twain National Forest needs to determine if designating more motorized trails can be done in a manner that not only provides for this recreational use, but also addresses environmental concerns. It is hoped that by providing additional designated OHV trails, OHV users would avoid undesignated roads and trails and, thereby, the overall environmental damage from unauthorized use can be reduced. Observations by OHV managers locally and from other states indicate that when OHV riders have designated areas to ride, they are more likely to stay on designated routes.

Therefore, the OHV customer, the resource manager, and the environment should all benefit from this study. Resource managers would be able to direct OHV customers to a designated trail system where impacts are confined, minimized, evaluated, monitored, and mitigated. With this study, OHV customers would know they are in an area where they can legally ride in a setting they enjoy. The Forest Service can promote responsible OHV use, better communication with this forest user group, promote local partnerships for conservation education and OHV trail maintenance, and evaluate resource and social impacts.

The focus of this study is to evaluate OHV use in three separate study locations and publish an evaluation of what is learned. The results of this study would by used to guide future management decisions on OHV trail management here and elsewhere in the National Forest System. At the end of the study period, unless the study is modified or terminated early, a separate decision, following the National Environmental Policy Act process, would be made as to whether or not to designate all, part, or none of the three areas as permanent OHV trails. The data collected from this study and other ongoing national studies would be used to corroborate and assist in making that decision.

DATES: Comments concerning this proposed action should be received within 30 days following publication of this NOI to receive timely consideration in the preparation of the draft EIS. Comments received during the previous scoping period will be considered for development of the draft EIS.

ADDRESSES: Please send your comments or requests for additional information to the Potosi/Fredericktown Ranger District, P.O. Box 188, Potosi, MO 63664, telephone (573) 438–5427, or the Poplar Bluff Ranger District, P.O. Box 988, 1420 Maud Street, Poplar Bluff, MO 63901, (573) 785–1475. Electronic comments must be sent via the Internet to: *comments-eastern-mark-twain-potosi@fs.fed.us* within 30 days of the publication of this of this NOI. In order for electronic comments to be considered, they must be sent to the aforementioned email address. To access project information electronically, go to: *http://www.fs.fed./us/r9/marktwain/projects/project.htm.* Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection upon request.

FOR FURTHER INFORMATION CONTACT: Tom McGuire, Project Leader/Integrated Resource Analyst, Potosi/Fredericktown Ranger District, P.O. Box 188, Potosi Missouri 63664, phone (573) 438–5427.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action is to conduct a three-year study to evaluate three motorized trail systems. This study would help the Forest Service determine the environmental and social impacts of OHV trails on the National Forest. Of the 137 miles of roads and trails included in the study area, only nine miles of new trail will be constructed, the remainder is existing roads and trails. Existing conditions would be evaluated prior to opening the trail systems, and resource conditions would be monitored throughout the duration of the study. Management would respond to trail conditions and potential resource concerns by using different techniques, such as seasonal closures and weather related closures, which would be part of the study. Preliminary monitoring of the project area would be used as a baseline to determine environmental effects occurring during the study period. Prior to initiating the study, preliminary levels of acceptable change would be established. If changes to the environment occur that are beyond the levels of acceptable change, the study would be modified or OHV use terminated during the 3-year study

period. Roads and trails would be designated open by the use of trail markers. Most of the designated trail system would consist of current system, non-system, and county roads, and trails that have been previously used and are in locations suitable for the proposed study use. Many of these trails and roads have been used for a number of years. A small number of connector trails would be constructed to connect existing trail sections. Several existing non-system road segments and trails would be closed to motorized use as part of this proposal for soil and water protection, protection of heritage resource sites, stream crossings, sensitive habitats, and locations in proximity to private property. The county roads in Washington County would remain under county jurisdiction.

The proposed trail study would be under the fee demonstration authority. The fees collected would be used to increase Forest Service presence in the study areas, to provide visitor information at trailheads, and to accomplish trail maintenance.

The 1986 Mark Twain National Forest Land and Resource Management Plan (Forest Plan), as amended, provides general guidance and direction for the Proposed Action. The OHV Trail Study meets the Forest Plan Direction, Recreation Management Goals (Forest Plan IV–1), and the Forest-wide Management Direction for Recreation Management of trails (Forest Plan IV–29–IV–30).

Decision Space

Decision making will be limited to activities relating to the proposed actions. The primary decision to be made will be whether or not to implement the proposed actions listed above, a no-action alternative, or another action alternative that responds to the project's purpose and needs.

Preliminary Issues

A review of public comments received thus far has identified a number of issues. The issues include, but are not limited to, concerns about pollution, soil, water and vegetation impacts, wildlife impacts, trespass and noise. Issues also include concerns about illegal off-trail use and the need to provide a place for legal, environmentally sound OHV use.

Public Participation

The Forest Service previously scoped this proposed action for sixty days, with the scoping period ending February 22, 2004, an open house was conducted on February 10, 2004 in Rolla, MO and February 17, 2004 in St. Louis, MO. Comments received during the previous scoping period and open house will be considered. This notice constitutes notification for public participation pursuant to 36 CFR 295.3.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in September 2004. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register.** Comments received on the draft EIS will be analyzed and considered in preparation of a final EIS, expected in December 2004. A Record of Decision (ROD) will also be issued at that time along with the publication of a Notice of Availability of the final EIS and ROD in the **Federal Register.**

Reviewers Obligation To Comment

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal in such a way that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir, 1986), and *Wisconsin Heritages Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period of the draft EIS in order that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The responsible official for this environmental impact statement is Ronnie Raum, Forest Supervisor, Mark Twain National Forest.

Dated: April 28, 2004.

Ronnie Raum,

Forest Supervisor, Mark Twain National Forest, 401 Fairgrounds Rd., Rolla, Missouri 65401.

[FR Doc. 04–10272 Filed 5–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Timber Sale Contract Forms FS–2400–6 and FS–2400–6T

AGENCY: Forest Service, USDA.

ACTION: Notice; final timber sale contracts.

SUMMARY: The Forest Service is implementing revisions to its timber sale contracts, Form FS–2400–6, for scaled sale procedures, and Form FS–2400–6T, for tree measurement timber sale procedures. The revisions are the first substantive changes in the standard timber sale contract provisions in over 30 years. A notice with request for comment on the proposed contract revisions was published in the **Federal Register** on December 19, 2003 (68 FR 70758). The Forest Service made appropriate changes to the contracts in response to the public comments. The final revised contracts and a detailed summary of the Forest Service responses to public comments are available for review, as provided in the **ADDRESSES** section of this notice.

DATES: The final revised timber sale contract forms are effective May 6, 2004.

ADDRESSES: The final revised timber sale contract forms and the Forest Service response to public comments are available for public review on the Forest Service World Wide Web/ Internet site at: *http://www.fs.fed.us/forestmanagement/infocenter/newcontracts/index.shtml.* Alternatively, the contracts and responses to comments can be reviewed in the office of the Director of Forest and Rangeland Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest and Rangeland Management Staff, (202) 205–1753.

SUPPLEMENTARY INFORMATION:

Background

Timber sale contract Forms FS–2400–6 and FS–2400–6T are used by the Forest Service for the sale of all large, complex timber sales. Timber sale contract Form FS–2400–6 is used when timber is measured for payment after it is harvested, and timber sale contract Form FS–2400–6T is used when the basis for payment is measurement prior to sale. These contracts were originally brought into use in July 1970 and January 1972, respectively, and were the result of extended discussions between the Federal Timber Purchasers Committee and the Forest Service. These contracts were revised in September 1973 and October 1973, respectively, to incorporate modifications based upon experience gained and policy changes since their inception.

From 1973 until July 2001, the requirements of new legislation and Forest Service policy were implemented in the contracts by issuing special provisions that replaced or added to the standard contract provisions. In July 2001, new versions of timber sale contract Forms FS–2400–6 and FS–2400–6T were issued. The July 2001 versions incorporated the special provisions that had been brought into use since 1973, but did not make any other changes that affect the rights and obligations of the Forest Service and timber sale purchasers.

Summary of Comments

In response to public comments, over 75 changes were made to timber sale contract Forms FS–2400–6 and FS–2400–6T, including:

1. Adding a contract provision to provide for an emergency rate redetermination after severe market declines.
2. Changing the procedure for reimbursing purchasers for changes in road construction cost to provide more timely reimbursement.
3. Removing the contract provision requiring that purchasers comply with other Federal, State, and local laws, since they have this obligation anyway.
4. Shortening the time requirement for the Forest Service to inspect the timber sale purchaser's completed work from 10 days to 5 days.
5. Adding a contract provision to allow the timber sale purchaser to terminate the contract if the market declined substantially during a Forest Service suspension.
6. Based on information it currently has, the Forest Service believes the appropriate level for liquidated damages should be increased from 7 percent to 15 percent. The Forest Service will monitor liquidated damages to determine if further adjustments are needed.
7. Adding a contract provision to provide for reducing the performance bond during a Forest Service suspension.

Contract Revisions

The final revised timber sale contract Forms FS–2400–6 and FS–2400–6T provide a better balance of risk between the timber sale purchaser and:

1. Clarify and simplify the remedies available when contracts are suspended, modified, or terminated for environmental reasons.
2. Incorporate special provisions that are applicable to all timber sales into the standard contract provisions.
3. Correct inconsistencies and clarify language that has accumulated by the addition of 30 years of special provisions to the timber sale contracts.
4. Make organizational and editorial changes intended to eliminate duplicative and unnecessary provisions.
5. Provide for liquidated damages when the Forest Service unilaterally terminates or partially terminates a timber sale contract.
6. Provide for a rate redetermination after a specified time when the Forest Service orders the delay or interruption of operations for specific reasons.
7. Provide for an emergency rate redetermination if there is a severe market decline after the timber sale is purchased.

The final revised contracts and responses to public comments are available electronically and in paper copy, as provided in the **ADDRESSES** section of this notice.

Dated: April 30, 2004.

Sally Collins,

Associate Chief.

[FR Doc. 04–10287 Filed 5–5–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 6, 2004.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–8818. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires 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)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5170 South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Weather Radio Transmitter Grant Program.

OMB Control Number: 0572–0124.

Type of Request: Extension of a currently approved information collection.

Abstract: The National Weather Service operates an All Hazards Early Warning System that alerts people in areas covered by its transmissions of approaching dangerous weather and other emergencies. The National Weather Service can typically provide warnings of specific weather dangers up to fifteen minutes prior to the event. At

present, this system covers all major metropolitan areas and many smaller cities and towns; however, many rural areas lack NOAA Weather Radio coverage. The Rural Utilities Service Weather Radio Transmitter Grant Program finances the installation of new transmitters to extend the coverage of the National Oceanic and Atmospheric Administration's Weather Radio system (NOAA Weather Radio) in rural America thereby promoting public safety and awareness. The President of the United States and the United States Congress have made $5 million in grant funds available to facilitate the expansion of NOAA Weather Radio system coverage into rural areas that are not covered or are poorly covered at this time. This grant program will continue to provide grant funds, on an expedited basis, for use in rural areas and communities of 50,000 or less inhabitants. Grant funds are available immediately and applications will be processed on a first-come, first-served basis until the appropriation is used in its entirety. Grant funds are used to purchase and install NOAA Weather Radio transmitters and antennas that are combined with donated tower space and other site resources to establish new rural NOAA Weather Radio transmitters. Eligible applicants must be non-profit corporations or associations (including Rural Utilities Service electric and telecommunications borrower cooperatives), units of local or state government, or Federally-recognized Indian tribes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 113.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 1,356.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 30, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–10281 Filed 5–5–04; 8:45 am]

BILLING CODE 3410–15–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 of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000 as Amended by the Trade Act of 2002 for Imports of Certain Worsted Wool Fabric.

Agency Form Number: ITA–4139P, ITA–4140P.

OMB Number: 0625–0240.

Type of Request: Regular submission.

Estimated Burden: 352 hours.

Estimated Number of Respondents: 24.

Est. Avg. Hours Per Response: 1–24 hours.

Needs and Uses: Title V of the Trade and Development Act of 2000 ("the Act") as amended by the Trade Act of 2002 contains several provisions to assist the wool products industries. These include the establishment of tariff rate quotas (TRQ) for a limited quantity of worsted wool fabrics. The Act requires the President to fairly allocate the TRQ to persons who cut and sew men's and boys' worsted wool suits and suit like jackets and trousers in the United States, and who apply for an allocation based on the amount of suits they produce in the prior year. The Act further requires the President, on an annual basis, to consider requests from the manufacturers of the apparel products listed above, to modify the limitation on the quantity of imports subject to the TRQ. The Act specifies factors to be addressed in considering such requests. The TRQ was originally effective for goods entered or withdrawn from warehouse for consumption, on or after January 1, 2001, and was to remain in force through 2003. On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act including the extension of the program through 2005. A TRQ allocation will be valid only in the year for which it is issued.

On December 1, 2000, the President issued Proclamation 7383 that, among other things, delegates authority to the Secretary of Commerce to allocate the TRQ; to consider, on an annual basis, requests to modify the limitation on the quantity of the TRQ and to recommend appropriate modifications to the President; and to issue regulations to implement these provisions. On January 22, 2001, the Department of Commerce published regulations establishing procedures for allocation of the tariff rate quotas (66 FR 6459, 15 CFR part 335) and for considering requests for modification of the limitations (66 FR 6459, 15 CFR part 340).

The Department must collect certain information in order to fairly allocate the TRQ to eligible persons and to make informed recommendations to the President on whether or not to modify the limitation on the quantity of the TRQ. This request for comment is for the proposed information collections after July 31, 2004.

Affected Public: Business or other for profits.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

Written comments and recomendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10346 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–DR–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 of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Information for Self-Certification Under FAQ 6 of the United States European Union Safe Harbor Privacy Framework.

Agency Form Number: N/A.

OMB Number: 0625–0239.

Type of Request: Regular Submission.

Burden: 350 hours.

Number of Respondents: 500.

Avg. Hours Per Response: 20–40 minutes.

Needs and Uses: In response to the European Union Directive on Data Protection that restricts transfers of personal information from Europe to countries whose privacy practices are not deemed "adequate," the U.S. Department of Commerce has developed a "Safe Harbor" framework that will allow U.S. organizations to satisfy the European Directive's requirements and ensure that personal data flows to the United States are not interrupted. In this process, the Department of Commerce repeatedly consulted with U.S. organizations affected by the European Directive and interested non-government organizations. On July 27, 2000, the European Commission issued its decision in accordance with Article 25.6 of the Directive that the Safe Harbor Privacy Principles provide adequate privacy protection. The Safe Harbor framework bridges the differences between the European Union (EU) and U.S. approaches to privacy protection. The complete set of Safe Harbor documents and additional guidance materials may be found at *http://export.gov/safeharbor.*

Once the Safe Harbor was deemed "adequate" by the European Commission on July 27, 2000, the Department of Commerce began working on the requirements that are necessary to put this accord into effect. The European Member States implemented the decision made by the Commission within 90 days. Therefore, the Safe Harbor became operational on November 1, 2000. The Department of Commerce created a list for U.S. organizations to sign up to the Safe Harbor and provided guidance on the mechanics of signing up to this list. As of April 22, 2004, 487 U.S. organizations have been placed on the Safe Harbor List, located at *http://export.gov/safeharbor.*

Organizations that have signed up to this list are deemed "adequate" under the Directive and do not have to provide further documentation to European officials. This list will be used by EU organizations to determine whether further information and contracts will be needed for a U.S. organization to receive personally identifiable information. This list is necessary to make the Safe Harbor accord operational, and was a key demand of the Europeans in agreeing that the Principles were providing "adequate" privacy protection.

The Safe Harbor provides a number of important benefits to U.S. firms. Most importantly, it provides predictability and continuity for U.S. organizations that receive personal information from the European Union. Personally identifiable information is defined as any that can be identified to a specific person, for example an employee's name and extension would be considered personally identifiable information. All 15 member countries are bound by the European Commission's finding of "adequacy". The Safe Harbor also eliminates the need for prior approval to begin data transfers, or makes approval from the appropriate EU member countries automatic. The Safe Harbor principles offer a simpler and cheaper means of complying with the adequacy requirements of the Directive, which should particularly benefit small and medium enterprises.

The decision to enter the Safe Harbor is entirely voluntary. Organizations that decide to participate in the Safe Harbor must comply with the Safe Harbor's requirements and publicly declare that they do so. To be assured of Safe Harbor benefits, an organization needs to reaffirm its self-certification annually to the Department of Commerce that it agrees to adhere to the safe harbor's requirements, which includes elements such as notice, choice, access, data integrity, security and enforcement.

This list will be most regularly used by European Union organizations to determine whether further information and contracts will be needed by a U.S. organization to receive personally identifiable information. It will be used by the European Data Protection Authorities to determine whether a company is providing "adequate" protection, and whether a company has requested to cooperate with the Data Protection Authority. This list will be accessed when there is a complaint logged in the EU against a U.S. organization. This will be on a monthly basis. It will be used by the Federal Trade Commission and the Department of Transportation to determine whether a company is part of the Safe Harbor. This will be accessed if a company is practicing "unfair and deceptive" practices and has misrepresented itself to the public. It will be used by the Department of Commerce and the European Commission to determine if organizations are signing up to the list. This list is updated on a regular basis.

Affected Public: Businesses or other for-profit.

Frequency: Annually.

Respondent's Obligations: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork, Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10347 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Written Assurances for Exports of Technical Data Under License Exception TSR.

Agency Form Number: None.

OMB Approval Number: 0694–0023.

Type of Request: Extension of a currently approved collection of information.

Burden: 103 hours.

Average Time Per Response: 31 minutes per response.

Number of Respondents: 200 respondents.

Needs and Uses: The Export Administration Regulations (EAR) require in Section 740.6 that exporters obtain letters of assurance from their importers stating that technology or software will not be reexported or released to unauthorized destinations that are subject to controls for national security or foreign policy and nuclear non-proliferation reasons. The importer, in making these assurances acknowledges his/her requirement to comply with the EAR. The written assurance requirement of License Exception TSR (Technology and Software Under Restriction) provides greater security for the protection of U.S. origin technology and software that

becomes incorporated into foreign products.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

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.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: May 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10348 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–33–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: U.S. Census Age Search.

Form Number(s): BC–600, BC–649(L), BC–658(L).

Agency Approval Number: 0607–0117.

Type of Request: Revision of a currently approved collection.

Burden: 699 hours.

Number of Respondents: 2,620.

Avg Hours Per Response: BC–600—12 min.; BC–649(L) & BC–658(L)—6 min.

Needs and Uses: This request for clearance is for a revision of the currently approved collection for the United States Age Search Service. The age and citizenship searching service provided by the National Processing Center is a self-supporting operation of the U.S. Census Bureau. Expenses incurred in providing census transcripts are covered by the fees paid by individuals requesting a search of the census records. The Survey Processing Branch/Personal Census Search Unit in Jeffersonville, Indiana, maintains the 1910–2000 Federal censuses for searching purposes. The purpose of the searching is to provide, upon request, transcripts of personal data from historical population census records. Information relating to age, place of birth, and citizenship is provided upon payment of the established fee to individuals for their use in qualifying for social security, old age benefits, retirement, court litigation, passports, insurance settlements, etc. The census records maintained in this unit are confidential by an Act of Congress. The Census Bureau is prohibited by federal laws from disclosing any information contained in the records except upon written request from the person to whom the information pertains or to a legal representative.

The United States Census Bureau is amending Title 15, Code of Federal Regulations, Parts 50 and 80, fee structure for age search and citizenship information, to increase the fee for an age search from $40 to $65. This change is being made to recover the increase in cost to process a request due to operating cost. Title 13, United States Code, requires recovery of the costs. We are also adding an additional charge of $20 per case for expedited requests requiring search results within one day.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Title 13 U.S.C., Section 8a.

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 3, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10349 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice to give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MARCH 20, 2004–APRIL 23, 2004

Firm name	Address	Date petition accepted	Product
Rosewood Industries, Inc	201 Purdue Road, Stigler, OK 74462	4/6/2004	Cabinets of wood.
Heritage Sportswear, LLC d.b.a. Joan Vass USA.	505 Manning Street, Marion, SC 29571	4/1/2004	Ladies cotton knitwear, high-end tops, pants and skirts, and sportswear from and cotton blends.
Southern Oregon Sales, Inc	18 Stewart Avenue, Medford, OR 97501	3/26/2004	Pears.
Old Western Paint Co., Inc	2001 West Barberry Place, Denver, CO 80204.	3/22/2004	Oil based paint and varnish and water based paint.
Vergason Technology, Inc	88 State Route 224, Van Etten, NY 14889.	3/26/2004	Vacuum metalizing and coating machine and parts.
ABM Manufacturing, Inc	415 North Marshall, Sedalia, MO 65301	3/30/2004	Articles of aluminum.
Minco Tool and Mold, Inc	5690 Webster Street, Dayton, OH 45414	4/7/2004	Injection molds for the automotive, appliance, electronic and business machine indusry.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MARCH 20, 2004–APRIL 23, 2004—Continued

Firm name	Address	Date petition accepted	Product
Sacoma International, Inc	955 South Walnut Street, Edinburg, IN 46124.	4/5/2004	Precision machined parts i.e. exhaust fittings, seating supports and steering column links.
Millennia Group, Inc. (The)	1105 Pittsburgh Street, Cheswick, PA 15024.	4/5/2004	Printed circuit boards.
Hughes Cattle Company	HC 74 Box 134, Fort Davis, TX 79734	4/6/2004	Calves.
Mainelli Tool & Die, Inc	30 Houghton Street, Providence, RI 02904.	4/22/2004	Fashion and religious jewelry in precious metals and base metals.
Sciaky, Inc	4915 West 67th Street, Chicago, IL 60638.	4/2/2004	Electron beam welding systems.
Video Products Group, Inc	1380 Flynn Road, Camarillo, CA 93012	4/6/2004	Video imaging equipment.
Santa Fe Rubber Products, Inc	12306 East Washington Blvd., Whittier, CA 90606.	4/6/2004	Custom rubber products.
Chemart Company	11 New England Way, Lincoln, RI 02864	4/20/2004	Christmas and collectible ornaments.
Camillus Cutlery Company	54 Main Street, Camillus, NY 13031	4/20/2004	Pocket, hunting, military and various other types of knives.
Migali Industries, Inc	1475 South Sixth Street, Camden, NJ 08104.	4/20/2004	Commercial refrigerators and freezers.
Kennedy and Bowdon Machine Comany, Inc.	1229 Heil Quaker Boulevard, LaVergne, TN 37086.	4/20/2004	Molds for injection molding of plastics.
Teme, Inc	306 County Road 1, Gallup, NM 87301	4/22/2004	Silver, platinum and gold jewelry and parts.
Cavedon Company, Inc	26 Avenue C, Woonsocket, RI 02895	4/20/2004	Scented candles.
Camardese Plastics Corp	1711 Highway 21, Clarksville, AR 72830	4/20/2004	Plastic shipping trays.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter.

A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the 10th calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 29, 2004.

Anthony J. Meyer,

Senior Program Analyst, Office of Strategic Initiatives.

[FR Doc. 04–10301 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 16–2004]

Foreign-Trade Zone 38—Charleston, SC; Application for Subzone, Black & Decker Corporation (Power Tools, Lawn and Garden Tools, and Home Products Distribution), Fort Mill, SC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status for the tools and home products warehousing/distribution facility of Black & Decker Corporation, in Fort Mill, South Carolina. The facility is located within the Charlotte, North Carolina, CBP port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 29, 2004.

The Black & Decker facility (1 building, 1,226,000 sq. ft. on 69.57 acres) is located at 4041 Pleasant Road, York County (Fort Mill area), South Carolina. A portion of the building also lies within Mecklenburg County, North Carolina. The facility (800 employees) is used for the assembling, testing, packaging, warehousing and distribution of hand-held tools and accessories; home products, including vacuums, flashlights and wet scrubbers; security hardware; plumbing products (including kitchen and bath faucets and accessories); and, fastening and assembly systems (including stud welding, specialty screws and related products and accessories; activities which Black & Decker is proposing to perform under FTZ procedures. Some 60–70 percent of the components are sourced abroad. About 14 percent of production is currently exported.

Zone procedures would exempt Black & Decker from Customs duty payments on foreign products that are re-exported. On domestic sales, the company would be able to defer payments until merchandise is shipped from the plant. The applicant is also requesting to use zone procedures to take advantage of inverted tariff situations involving the assembly and packaging of certain promotional sets of products. Black & Decker is requesting to choose the lower rate on finished assembled sets rather than the individual component product rates. The component products include hand-held tools, chargers, batteries, tool storage boxes, gator clips (duty rates range from zero to 9.0%). In certain cases, the finished sets may be classified by the essential character of the hand-held tool (duty rates, zero to 3.5%). Assembled tool sets constitute some 5 percent of sales from the Fort Mill site. The application indicates that the savings from zone procedures will help

improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is July 6, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 20, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 521 East Morehead Street, Suite 435, Charlotte, NC 28217.

Dated: April 29, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–10333 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17–2004]

Foreign-Trade Zone 84—Houston, TX; Application for Subzone, Michelin North America (Tire and Tire Accessories Distribution), Houston, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting special-purpose subzone status for the tire and tire accessory warehousing/distribution facility of Michelin North America (MNA), in Houston, Texas. The facility is located within the Houston-Galveston CBP port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 29, 2004.

The MNA facility (1 building, 660,000 sq. ft. on 40.6 acres) is located at 8800 City Park Loop, Houston (Harris County), Texas. The facility (50 employees) is used for the warehousing and distribution of tires and tire accessories (including tire flaps, inner tubes and gaskets), activities which MNA intends to perform under FTZ procedures. Some 30 percent of the tires are sourced abroad. About 10 percent of MNA's tire sales are currently exported.

Zone procedures would exempt MNA from Customs duty payments on foreign products that are re-exported. On domestic sales, the company would be able to defer payments until merchandise is shipped from the plant. FTZ designation would further allow MNA to utilize certain Customs procedures resulting in increased efficiencies for its logistics and distribution operations. MNA would be able to avoid duty on foreign inputs which become scrap/waste, estimated at 1–3 percent of total inventory. FTZ status may also make a site eligible for benefits provided under State/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is July 6, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 20, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 15600 John F. Kennedy Blvd., Suite 530, Houston, TX 77032.

Dated: April 29, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–10332 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042904A]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on May 17–20, 2004.

ADDRESSES: These meetings will be held at the Westin Beach Resort, 97000 South Overseas Highway, Key Largo, FL; telephone: (305) 852–5553.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

May 19, 2004

8:30 a.m.—Convene.

8:45 a.m.–11 a.m.—Receive public testimony on the Draft Reef Fish Amendment 22 (Red Snapper Rebuilding Plan) and Applications for Exempted Fishing Permits (if any).

11 a.m.–11:30 a.m.—Receive a report of the National Mercury Working Group.

1 p.m.–1:30 p.m.—Receive the Habitat Protection Committee report.

1:30 p.m.–4 p.m.—Receive the Reef Fish Management Committee report.

4 p.m.–4:30 p.m.—Receive the Shrimp Management Committee report.

4:30 p.m.–4:45 p.m.—(Closed Session) Receive the report of the Advisory Panel (AP) Selection Committee.

4:45 p.m.–5:15 p.m.—(Closed Session)—Receive the report of the Personnel Committee.

5:15 p.m.–5:30 p.m.—(Closed Session)—Receive the report of the

Council's Southeast Data and Review (SEDAR) Committee.

May 20, 2004

8:30 a.m.–9 a.m.—Receive the AP Selection Committee Report.

9 a.m.–9:15 a.m.—Receive the Personnel Committee report.

9:15 a.m.–9:30 a.m.—Receive the Council SEDAR Committee report.

9:30 a.m.–9:45 a.m.—Receive the Joint Reef Fish/Mackerel Management Committee report.

9:45 a.m.–10 a.m.—Receive a report on the Gulf States Marine Fishery Commission's Red Drum Meeting.

10 a.m.–10:15 a.m.—Receive a report on the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee meeting.

10:15 a.m.–10:30 a.m.—Receive the report on Council Chairs meeting.

10:30 a.m.–10:45 a.m.—Receive Enforcement Reports.

10:45 a.m.–11 a.m.—Receive the NMFS Regional Administrator's Report.

11 a.m.–11:30 a.m.—Receive Director's Reports.

11:30 a.m.–11:45 a.m.—Other Business

Committees

May 17, 2004

8:30 a.m.–9 a.m.—Convene the AP Selection Committee to appoint members of an Ad Hoc Advisory Panel for Offshore Marine Aquaculture.

9 a.m.–10:30 a.m.—Convene the Habitat Protection Committee to receive a presentation by NMFS on impacts of liquefied natural gas facilities; receive a report on the Kemp's Ridley turtle meeting; and discuss the Southeast Aquatic Resources Partnership (SARP).

10:30 a.m.–12 noon—Convene the Joint Reef Fish/Mackerel Management Committee to review hearing comments on the Joint Reef Fish/Mackerel Limited Access Scoping Document. The committees will also review and revise a Draft Scoping Document for Extension of the Charter Vessel Permit Moratorium.

1:30 p.m.–5:30 p.m.—Convene with the Reef Fish Management Committee to discuss the NMFS Southeast Fisheries Science Center's (SEFSC) bycatch reduction device (BRD) analyses. The committee will also review and take final action on the Final Reef Fish Amendment 22 (red snapper rebuilding program) and review the Public Hearing Draft of Vermilion Snapper Amendment 23 that contains alternatives for arresting overfishing of that stock by commercial and recreational fishermen. An options paper for Reef Fish Amendment 18 pertaining to the grouper fishery will be discussed. The committee will also consider using the current red snapper individual fishing quota (IFQ) profile as a scoping document. The Committee will develop recommendations for consideration by full Council on Wednesday afternoon.

May 18, 2004

8:30 a.m.–10:30 a.m.—Continue with the Reef Fish Management Committee.

10:30 a.m.–12 noon—Convene the Shrimp Management Committee to review Draft Shrimp Amendment 13.

1:30 p.m.–2:15 p.m.—(Closed Session)—Receive a briefing on Litigation.

2:15 p.m.–4 p.m.—Convene the Personnel Committee.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the untimely completion of discussion relevant to other agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (see **ADDRESSES**) by May 10, 2004.

Dated: April 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1031 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042804C]

Marine Mammals; File No. 1054–1731

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the University of Florida, Aquatic Animal Program, College of Veterinary Medicine, Gainesville, FL 32610 (Ruth Francis-Floyd, DVM, Principal Investigator), has applied in due form for a permit to acquire, import, and export marine mammal specimens for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 7, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1054–1731.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the

authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The general purpose of the research is to study various aspects of disease afflicting marine mammals. Infectious disease investigations include viral pathogens such as West Nile virus, St. Louis Encephalitis virus, herpesvirus, and poxviruses. Other projects include development of a marine mammal histology database and atlas, research on the effects of boat strikes on cetacean bone, and investigation into acute phase proteins in cetaceans. Cell lines are proposed to be developed for some projects. The applicant has requested authorization to receive, import, and export specimen samples (hard and soft parts) world-wide from all marine mammals under NMFS jurisdiction (up to 250 samples per species per year). Specimens that would be received, imported, and exported would be taken from the following sources in the U.S. and/or abroad: (1) routine husbandry sampling of captive animals; (2) samples taken from live animals by other permitted/authorized researchers; (3) samples taken from stranded animals; and (4) samples taken from animals during legal subsistence hunts.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 30, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–10331 Filed 5–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 7, 2004.

Title, Form, and OMB Number: United States Air Force Academy Evaluation of Candidate; USAFA Form 145; OMB Number 0701—[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 1,800.

Responses Per Respondent: 1.

Annual Responses: 1,800.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 600.

Needs and Uses: The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. The information provides candidates the opportunity to show through their English, Math, or Chemistry/Physics instructors that they can meet Air Force academic performance and character standards.

Affected Public: Individuals or Households.

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 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: April 28, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–10258 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 6, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Community and Family Policy/MWR Policy), ATTN: Colonel Michael A. Pachuta, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 602–4994.

Title, Associated Form, and OMB Control Number: "Application for Discharge of Member or Survivor of Member of group Certified to Have Performed Active Duty with the Armed Forces of the United States," DD Form 2168, 0704–0100.

Needs and Uses: This information collection requirement is necessary to

implement Public Law 95–202, section 401, which directs the Secretary of Defense to determine if civilian employment or contractual service rendered by groups to the Armed Forces of the United States shall be considered active duty. This information is collected on DD Form 2168, "Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States," which provides the necessary data to assist each of the Military Departments in determining if an applicant was a member of a group which has performed active military service. Those individuals who have been recognized as a member of an approved group are eligible for benefits provided for by laws administered by the Veteran's Administration.

Affected Public: Individuals or households.

Annual Burden Hours: 1,500 hours.

Number of Respondents: 3,000.

Responses Per Respondent: 1.

Average Burden Per Response: .5 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Public Law 95–202 directed the Secretary of Defense to determine if civilian employment or contractual service rendered by groups to the Armed Forces of the United States shall be considered active duty. Individuals recognized as a member of an approved group will be eligible for benefits provided for by the laws of the Veteran's Administration. The information collected on DD Form 2168, "Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States," is necessary to assist each of the Military Departments in determining if an applicant was a member of a group which has been found to have performed active military service and to assist in issuing an appropriate certificate of service. Information provided by the applicant will include: The name of the group served with; dates and place of service; highest grade/rank/rating held during service; highest pay grade; military installation where ordered to report; specialty/job title(s). If the information requested on the DD Form 2168 is compatible with that of a corresponding approved group, and the applicant can provide supporting evidence, he or she will receive veteran's status in accordance with provisions of DoD Directive 1000.20. Information from the DD Form 2168 will be extracted and used to complete the DD Form 214, "Certificate for Release or Discharge from Active Duty."

Dated: April 28, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 04–10259 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Reqeust

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 June 7, 2004.

Title, Form, and OMB Number: Record of Arrivals and Departures of Vessels at Marine Terminals; ENG Form 3926; OMB Number 0710–0005.

Type of Request: Reinstatement.

Number of Respondents: 400.

Responses Per Respondent: 13.5 average.

Annual Responses: 5,400.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 2,700.

Needs and Uses: The Corps of Engineers uses the ENG Form 3926 in conjunction with ENG Forms 3925, 3925B, and 3925P as the basic source of input to conduct the Waterborne Commerce Statistics data collection program. ENG Form 3926 is used as a quality control instrument by comparing the data collected on the Vessel Operation Report with that collected on the 3926. The information is voluntarily submitted by respondents to assist the Waterborne Commerce Statistics Center in the identification of vessel operators who fail to report significant vessel moves and tonnage.

Affected Public: Business or Other-for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget. Desk Officer for the U.S. Army Corps of Engineers, Room 10202, 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 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: April 30, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–10314 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Mobile Launch Platform Environmental Assessment and Draft Finding of No Significant Impact

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice of availability and request for comments.

SUMMARY: In accordance with National Environmental Policy Act (NEPA) regulations, the Missile Defense Agency (MDA) is initiating a public review and comment period for an Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI). This notice announces the availability of the Mobile Launch Platform (MLP) EA that analyzes the potential environmental impacts of activities associated with using the existing MLP as a platform for testing sensors and launching target and interceptor missiles. THe MLP could operate from any of the following locations: Western Range, Pacific Missile Range Facility (PMRF)/Kauai Test Facility (KTF), U.S. Army Kwajalein Atoll (USAKA)/Ronald Reagan Ballistic Missile Defense Test Site (RTS), and the Board Ocean Area (BOA) of the Pacific Ocean. The EA considers the impacts resulting from the proposed use of the MLP to support specific tests. The EA also considers cumulative impacts associated with the proposed use of the MLP to support test events.

Based on the analysis documented in the EA, the MDA has concluded that no significant impacts are expected to result from the proposed action. The Draft FONSI was prepared to document this preliminary conclusion.

DATES: The public review and comment period for this EA and Draft FONSI begins with the publication of this notice in the **Federal Register.** All comments on this EA and Draft FONSI

must be received by the MDA no later than June 7, 2004.

Copies of the EA and Draft FONSI will be made available for review at the following public libraries:

- Hawaii State Library, Hawaii Documents Center, 478 South King Street, HI 96813.
- Lihu'e Regional Library, 4344 Hardy Street, Lihu'e, HI 96766–1251.
- California State Library, Library and Courts Building, 914 Capitol Mall, Sacramento, CA 05814.
- Lompoc Public Library, 501 E. North Avenue, Lompoc, CA 93436.

A downloadable electronic version of the EA and Draft FONSI are available on the MDA Internet site: *http://www.acq.osd.mil/bmdo/bmdolink/html/.*

ADDRESSES: Written and oral comments regarding the EA and Draft FONSI should be submitted to MLP EA, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031; via toll-free fax 1–877–851–5451; or via e-mail *mlp.ea@icfconsulting.com.*

SUPPLEMENTARY INFORMATION: The MDA has a requirement to develop, test, deploy, and plan for decommissioning a Ballistic Missile Defense System (BMDS) to provide a defensive capability for the United States, its deployed forces, friends, and allies from ballistic missile threats. The proposed action would provide the MDA with the capability to conduct launches using multiple realistic target and interceptor trajectories in existing test ranges and the BOA. In addition, the proposed action would allow MDA the capability to use sensors at test support positions in remote areas of the ocean by locating these sensors onboard the MLP.

The sensors that would be used from the MLP include radars, telemetry, and optical systems. Examples of radars that could be used include: TPS–X, Mk–74, and Coherent Signal Processor radars that already exist, and the BMDS radar, being developed by the MDA. Telemetry systems could include the Transportable Telemetry System and mobile range safety systems. Mobile optical systems such as the Stabilized High-Accuracy Optical Tracking System could also be placed on the MLP. Additional sensor systems may be temporarily based on the MLP as required. The targets that would be launched from the MLP include: pre-fueled and non-pre-fueled liquid propellant missiles and solid propellant missiles. The interceptor missiles that would be launched from the MLP use solid propellant. The MLP would be designed to operate from any of the following locations: Western Range, PMRF/KTF, USAKA/RTS, and the BOA. Two alternatives to the proposed action were considered in the EA. The first alternative would include using the MLP for the launch of missiles but not for testing sensors. The second alternative would include using the MLP to test sensors and launch pre-fueled liquid propellant missiles and solid propellant missiles but not non-pre-fueled liquid propellant missiles.

Potential impacts of the proposed action and alternatives were analyzed in the EA. Potential environmental impacts of the proposed action and alternatives include impacts to air quality, airspace, biological resources, geology and soils, health and safety, hazardous materials and hazardous waste, noise, transportation and infrastructure, and water resources. Potential impacts of the No Action Alternative were analyzed in the EA. Under the No Action Alternative, activities to be conducted from the MLP that have already been analyzed would continue and additional activities using the MLP would be considered on a case-by-case basis. The No Action Alternative would result in no impact to the environmental baseline as described for the affected environment in the EA; however, it could severely limit the MDA's ability to cost-effectively conduct and monitor realistic testing of the BMDS.

Potential cumulative impacts resulting from the proposed use of the MLP to support specific test events are also addressed in the EA.

Dated: April 30, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–10315 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Close Meeting

AGENCY: Defense Intelligence Agency, Joint Military Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, 1 June 2004, 1100 to 1700; and Wednesday, 2 June 2004, 0800 to 1600.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: April 28, 2004.

L.M. Bynum,

Alternate OSD Federal Register Officer, DOD.

[FR Doc. 04–10260 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Strategic Strike Skills will meet in closed session on June 24, 2004, at the U.S. Strategic Command, Omaha, Nebraska. The Task Force will assess the future strategic strike force skills needs of the Department of Defense (DoD).

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Last summer the DSB assessed DoD needs for future strategic strike forces. Assessed was the application of technology for non-nuclear weapons systems, communications, planning systems, and intelligence as well as the integration of strategic strike with active defenses as part of the new triad. This "skills" study will complement the previous strategic forces study by focusing on the people and the skills necessary to develop, maintain, plan, and successfully execute future strategic strike forces. At this meeting, the Task Force will: assess current skills available, both nuclear and non-nuclear of current long-range strike forces; identify, assess and recommend new/modified/enhanced skill sets necessary for successful future strike force development, planning, and operations; and recommend a strategy for the

successful evolution of the current skills to those required by future strike forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: April 28, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–10261 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Mobility will meet in closed session on June 1–2, 2004, July 1–2, 2004, August 17–18, 2004, and September 23–24, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will identify the acquisition issues in improving our strategic mobility capabilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review: the part transport plays in our present-day military capability—the technical strengths and weaknesses the operational opportunities and constraints; the possible advantage of better alignment of current assets with those in production and those to be delivered in the very near future; how basing and deployment strategies—CONUS-basing, prepositioning (ashore or afloat), and seabasing—drive our mobility effectiveness; the possible advantages available from new transport technologies and systems whose expected IOC dates are either short term (~ 12 years) or, separately, the long term (~ 25 years).

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–10262 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Identification Technologies will meet in closed session on June 7–8, 2004, and July 12–13, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will access current technologies and operational concepts to identify and track individuals and materiel.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. In this assessment, the task force's investigation will encompass defense, intelligence, and commercial systems; including compartmented technology in development and promising technologies in the lab that are not yet deployed. Technologies will include passive/active, line of sight/non-line of sight, and cooperative/non-cooperative. Potential mechanisms include predictive behavior modeling based on threat characteristics (attack modality, ideological makeup, social, ethnic, religious and political tendencies, *etc.*), identification technologies such as biometrics (iris scans, facial features, voice prints, *etc.*), DNA matching, and advanced non-identification technologies such as EO, RF, hyperspectral, and fluid surface assembly (FSA) sensors.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. app. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–10263 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to discuss embedded media, sexual assault procedures, and retention. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed below no later than 5 p.m., May 17, 2004. Oral presentations by members of the public will be permitted only on Tuesday, May 25, 2004, from 3:30 p.m. to 3:45 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 5 p.m., May 17, 2004 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on May 17, 2004.

DATES: May 24–25, 2004, 8:30 a.m.–5:30 p.m.

Location: Doubletree Hotel Crystal City National Airport, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: MSgt Gerald T. Posey, USAF, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Monday, May 24, 2004, 8:30 a.m.–5:30 p.m.

Welcome & Administrative Remarks
Embedded Media
National Military Family Association Study on Families and Deployment
Services Sexual Assault Procedures

Tuesday, May 25, 2004, 8:30 a.m.–4:30 p.m.

Administrative Remarks
OSD Health Affairs Civilian and Military Care Centers Study
Navy Surface Warfare Officer Briefing
Services Brief on Pregnancy Policies
Reserve Survey Results
Service Senior Equal Opportunity Advisor Panel
Public Forum (3:30–3:45 p.m.)

Note: Exact order may vary.

Dated: April 28, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–10264 Filed 5–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meetings of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meetings.

SUMMARY: The CNO Executive Panel will provide consensus advice to the Chief of Naval Operations on shaping the Navy's force of the 21st century and receive CNO direction regarding future studies to be conducted by the Panel.

DATES: The meetings will be held on Thursday, May 20, 2004, from 8:30 a.m. to 10 p.m., and on Friday, May 21, 2004, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meetings will be held at the Naval Service Training Command, Bldg 1 Boardroom, 2601A Paul Jones Street, Great Lakes, IL 60088, with the exception of the evening of May 20, 2004, when the meeting will be held at Harrison Manor House, Lake Bluff, IL 60044.

FOR FURTHER INFORMATION CONTACT: Commander David Hughes, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, (703) 681–4908 or Lieutenant Commander Chris Corgnati, CNO Executive Panel, (703) 681–4909.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute information that relates solely to the internal personnel rules and practices of the Navy. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(2) of title 5, United States Code.

Dated: April 30, 2004.

S.A. Hughes,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–10294 Filed 5–5–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 7, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 29, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants under the Student Support Services Program.

Frequency: Every 4 years.

Affected Public: Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 40,800.

Abstract: The application is needed to conduct a national competition under the Student Support Services Program for program year 2005–2006. The program provides grants to institutions of higher education and combinations of institutions of higher education for projects designed to increase the retention and graduate rates of eligible students; increase the transfer rate of eligible students from two-year to four-year institutions; and foster an institutional climate supportive of the success of low-income and first generation students and individuals with disabilities through the provision of support services.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2545. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, 9th Floor, Washington, DC 20202. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–10273 Filed 5–5–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 7, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, ED Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 30, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Fulbright-Hays Training Grants: Faculty Research Abroad Program CFDA 84.019A and Doctoral Dissertation Research Abroad Program CFDA 84.022A.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 660.

Burden Hours: 18,460.

Abstract: This application allows individual graduate students and faculty members to compete for Fulbright-Hays fellowships and enables the Department of Education to make awards to U.S. institutions of higher education to develop and improve modern foreign language and area studies training programs.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2478. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center South, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–10274 Filed 5–5–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–118–000, et al.]

Avista Corporation, et al.; Electric Rate and Corporate Filings

April 27, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Avista Corporation d/b/a Avista Utilities

[Docket Nos. EL01–118–000, EL01–118–001, and ER99–1435–000]

Take notice that on April 22, 2004, Avista Corporation d/b/a Avista Utilities (Avista Utilities) tendered for filing a Code of Conduct for Voluntarily Submitting Electricity Transaction Data to Publications in compliance with the Commission's Policy Statement on Natural Gas and Electric Price Indices, Price Discovery in Natural Gas and Electric Markets, 104 FERC ¶ 61,121 (2003), as amended by Order Clarifying Prior Notice, 105 FERC 61, 277 (2003) (Policy Statement) in Commission order issued July 24, 2003, in Docket No. EL01–118–000, 001 and ER99–1435–000.

Comment Date: May 13, 2004.

2. Pilot Power Group, Inc.

[Docket No. ER01–1699–005]

Take notice that on April 21, 2004, Pilot Power Group, Inc. (Pilot) submitted for filing: (a) Its triennial market power analysis in compliance with the Commission Order issued in Docket No. ER01–1699–000 dated April 30, 2001; and (b) amendments to its market-based rate schedules approved in this docket, in compliance with the Commission's Order issued November 17, 2003, in Docket No. EL01–118–000 and 001, Amending Market-Based Rate Tariffs and Authorizations.

Comment Date: May 12, 2004.

3. Entergy-Koch Trading, LP

[Docket No. ER01–2781–005]

Take notice that on April 20, 2004, Entergy-Koch Trading, LP (EKT) filed a document informing the Commission of a non-material change in the characteristics that the Commission relied upon in granting EKT market-based rate authorization under section 205 of the Federal Power Act.

Comment Date: May 11, 2004.

4. Duke Energy Oakland, LLC

[Docket No. ER03–116–002]

Take notice that on April 22, 2004, Duke Energy Oakland, LLC (DEO) submitted a refund report to the Commission in response to the Commission's Order issued December 12, 2003, in Docket No. ER03–116–000.

Comment Date: May 13, 2004.

5. Pacific Gas and Electric Company

[Docket No. ER03–1115–003]

Take notice that on April 22, 2004, Pacific Gas and Electric Company (PG&E) submitted a revised Generator Special Facilities Agreement, Supplemental Letter Agreement, and Generator Interconnection Agreement, between PG&E and Elk Hills Power, LLC in response to, and in compliance with, the Commission's Order issued March 26, 2004, in Docket Nos. ER03–1115–001 and 002.

PG&E states that copies of this filing have been served upon Elk Hills, GWF Energy Company, LLC, Occidental Petroleum Corp, Sempra Energy, Preston Gates Ellis & Rouvelas Meeds LLP, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: May 13, 2004.

6. South Carolina Electric & Gas Company

[Docket No. ER03–1398–003]

Take notice that on April 21, 2004, South Carolina Electric & Gas Company (SCE&G) filed with the Commission a revised Construction & Maintenance Agreement for Interconnection Facilities Between Columbia Energy LLC and SCE&G, in compliance with the Commission's March 22, 2004, Order in this proceeding. *South Carolina Electric and Gas Company*, 106 FERC ¶ 61,265 (2004). SCE&G has requested an effective date of November 15, 2003.

Comment Date: May 12, 2004.

7. Arizona Public Service Company

[Docket No. ER04–442–002]

Take notice that on April 22, 2004, Arizona Public Service Company (APS) tendered for filing APS' response to the Commission's Deficiency Letter in Docket No. ER04–442–002.

APS states a copy of this filing has been served on those parties that have intervened in this docket.

Comment Date: May 13, 2004.

8. El Paso Electric Company

[Docket No. ER04–448–001]

Take notice that on April 22, 2004, El Paso Electric Company (EPE), tendered for filing information to support proposed changes to its Open Access Transmission Tariff (OATT), FERC Electric Tariff Third Revised Volume No. 1. EPE states that the information supports proposed variations from the pro forma Large Generator Interconnection Procedures and Large Generator Interconnection Agreement filed by EPE on January 20, 2004, in accordance with Order No. 2003 and also that it submitted the information in response to a deficiency letter, dated April 9, 2004, from the Commission Staff requesting the information.

EPE states that copies of the information were served upon all parties that have either requested or been granted intervention in this proceeding.

Comment Date: May 13, 2004.

9. Devon Power LLC, Middletown, Power LLC, Montville Power LLC and NRG Power Marketing Inc.

[Docket Nos. ER04–464–003, ER04–23 -006, and ER03–563–034 (Consolidated)]

Take notice that on April 21, 2004, Devon Power LLC, Middletown Power LLC, Montville Power LLC, (collectively Applicants) and NRG Power Marketing Inc., tendered for filing in compliance with the Commission's Order, issued March 22, 2004 in Docket Nos. ER04–464–000, *et al.*, ER04–23–000, *et al.*, and ER03–563–029 *et al.*, revised reliability must run Agreements among each of the Applicants.

Applicants state that they have served a copy of this filing on ISO–NE and each person designated on the official service list.

Comment Date: May 12, 2004.

10. Tor Power, LLC

[Docket No. ER04–698–001]

Take notice that on April 20, 2004, Tor Power, LLC (Tor) filed with the Commission an errata to Attachment 1 second page of the Tor Power, LLC, FERC Electric Rate Schedule No. 1. that is attached to a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority dated April 1, 2004.

Comment Date: May 11, 2004.

11. ISO New England Inc.

[Docket No. ER04–749–000]

Take notice that on April 20, 2004, ISO New England Inc. (ISO) made a filing under section 205 of the Federal Power Act to reflect changes to its Capital Funding Tariff. The ISO requests that the changes to the Capital Funding Tariff be allowed to go into effect on June 1, 2004.

ISO states that a copy of this filing has been mailed to: (1) Each current Transmission Customer under the NEPOOL Tariff that is not a Participant; and (2) the Governors and electric regulatory agencies of each of the States (as well as NEPUC and other regional organizations) located within the NEPOOL Control Area and in addition, the NEPOOL Participants are being provided electronic copies of the entire filing, via e-mail, through the Secretary of the NPC.

Comment Date: May 11, 2004.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–751–000]

Take notice that on April 21, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Commission's regulations, 18 CFR 35.12 (2003), submitted for filing an Interconnection and Operating Agreement among Estill County Energy Partners, LLC, the Midwest ISO and Kentucky Utilities Company.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: May 12, 2004.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–752–000]

Take notice that on April 21, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Commission's regulations, 18 CFR 35.12 (2003), submitted for filing an Interconnection and Operating Agreement among the City of West Liberty, Iowa, the Midwest ISO and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: May 12, 2004.

14. Sulfur Springs Valley Electric Cooperative, Inc.

[Docket No. ER04–753–000]

Take notice that on April 22, 2004, Sulfur Springs Valley Electric Cooperative, Inc., (SSVEC), tendered for filing its initial rate filing. SSVEC states that it may become a FERC-jurisdictional public utility on April 22, 2004, by virtue of its repurchase of its outstanding U.S. Department of Agriculture Rural Utilities Service debt. SSVEC states that, in compliance with section 205 of the Federal Power Act (16 U.S.C. 824d), SSVEC is filing with the Commission all of its rates, terms and conditions for potentially jurisdictional service. SSVEC further requests that the Commission disclaim jurisdiction over such agreements.

SSVEC states that copies of this filing were served upon Arizona Electric Power Cooperative, Inc., Arizona Public Service Company, Graham County Electric Cooperative, Inc., and the Arizona Corporation Commission.

Comment Date: May 13, 2004.

15. American Transmission Company LLC

[Docket No. ER04–754–000]

Take notice that on April 22, 2004, the American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Public Service Corporation, as generating company. ARCLLC requests that the Commission grant any waivers of the Commission's regulations necessary to make this Amended and Restated Agreement effective on March 19, 2004.

Comment Date: May 13, 2004.

16. Southern California Edison Company

[Docket No. ER04–755–000]

Take notice, that on April 22, 2004, Southern California Edison Company (SCE) tendered for filing the Interconnection Facilities Agreement between SCE and the City of Corona, California (Corona). SCE requests the Interconnection Agreement and the Service Agreement become effective on April 23, 2004.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, and Corona.

Comment Date: May 13, 2004.

17. PJM Interconnection, L.L.C.

[Docket No. RT01–2–014]

Take notice that on April 21, 2004, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to Schedule 6 of the PJM Operating Agreement, (PJM's Regional Transmission Expansion Planning Protocol), and to Part IV of the PJM Open Access Transmission Tariff. PJM states that the proposed amendments are submitted to comply with the Commission's order in this proceeding dated October 24, 2003.

PJM states that copies of this filing have been served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region.

Comment Date: May 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1030 Filed 5–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–419–002, et al.]

Xcel Energy Services, Inc., et al.; Electric Rate and Corporate Filings

April 29, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Xcel Energy Services Inc

[Docket No. ER04–419–002]

Take notice that on April 26, 2004, Xcel Energy Services Inc. (XES) filed proposed revisions to the Xcel Energy Operating Companies Joint Open Access Transmission Tariff (Joint OATT) in compliance with the Commission Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures*, 69 FR 15932 (March 26, 2004), and pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (2000). XES states that the revised tariff pages incorporate into the Joint OATT the *pro forma* Standard Large Generation Interconnection Procedures (LGIP) and the *pro forma* Standard Large Generation Interconnection Agreement (LGIA) adopted in Order No. 2003, with certain limited variations proposed under section 205. XES states that the proposed tariff changes replace the revisions to the Joint OATT filed January 20, 2004, in Docket No. ER04–419–000. XES further states that the proposed Joint OATT changes would affect new large generation interconnection requests (20 MW and above) to the transmission systems of Public Service Company of Colorado and Cheyenne Light, Fuel & Power Company. AES states that the compliance tariff sheets are proposed to be effective April 26, 2004, and the variations to the *pro forma* LGIP are proposed to be effective no later than June 26, 2004.

Comment Date: May 17, 2004.

2. El Paso Electric Company

[Docket No. ER04–448–002]

Take notice that on April 26, 2004, El Paso Electric Company (EPE) tendered for filing in compliance with Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures*, FERC Stats. & Regs. Preambles ¶ 31,160 (2004), Attachment J to its revised Open Access Transmission Tariff, FERC Electric Tariff Third Revised Volume No. 1, First Revised Sheet Nos. 182–384.

Comment Date: May 17, 2004.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–458–001]

Take notice that on April 26, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), pursuant to Section 205 of the Federal Power Act and the Commission's requirements established in Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures*, FERC ¶ 61,220 (2004), filed amendments to the tariff sheets submitted as part of the Midwest ISO's January 20, 2004, filing in Docket No. ER04–458–000. In addition, the Midwest ISO requested waiver of all appropriate Commission regulations necessary.

Comment Date: May 17, 2004.

4. PJM Interconnection, L.L.C.

[Docket No. ER04–580–001]

Take notice that on April 23, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing a substitute construction service agreement among PJM, Bethesda Triangle, LLC, and

Potomac Electric Power Company in compliance with the Commission's letter order issued March 26, 2004, in Docket No. ER04–580–001.

PJM states that copies of this filing were served upon persons designated on the official service list compiled by the Secretary in this proceeding and the parties to the agreements.

Comment Date: May 14, 2004.

5. Public Service Company of New Mexico

[Docket No. ER04–760–000]

Take notice that on April 26, 2004, Public Service Company of New Mexico (PNM) tendered for filing revisions to its Open Access Transmission Tariff (FERC Electric Tariff, Second Revised Volume No. 4) to incorporate certain changes with respect to the Large Generator Interconnection Procedures (LGIP) and the Large Generator Interconnection Agreement (LGIA) requirements issued by the Commission in FERC Order Nos. 2003 and 2003–A. PNM requests an effective date of June 25, 2004.

PNM states that copies of the filing have been sent to all PNM large generation interconnection customers, to all entities that have pending large generation interconnection requests with PNM, to the New Mexico Public Regulation Commission, and to the New Mexico Attorney General.

Comment Date: May 17, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1032 Filed 5–5–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[MN83–1; FRL–7658–1]

Notice of Issuance of Prevention of Significant Deterioration and Part 71 Federal Operating Permits to Energy Alternatives, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces that, pursuant to Part C and Title V of the Clean Air Act, on December 20, 2000, and February 23, 2004, the Environmental Protection Agency (EPA), Region 5 issued a Prevention of Significant Deterioration (PSD) Construction Permit and a Title V Permit to Operate (Title V Permit), to Energy Alternatives Inc. These permits authorize the company to construct and operate four diesel-fired internal combustion engines to provide peak load management and back-up power to the Treasure Island Resort & Casino. The engines and the casino are located in Red Wing, Minnesota on the Prairie Island Indian Reservation.

DATES: The PSD and Title V Permits became effective on January 10, 2001, and April 8, 2004, respectively. Both permits have undergone the required public comment periods in accordance with title 40 of the Code of Federal Regulations (CFR) sections 52.21(q) and 71.11, and have been issued as final.

ADDRESSES: The final signed permits are available for public inspection online at *http://www.epa.gov/region5/air/permits/epermits.htm* or during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ethan Chatfield, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–5112, or *chatfield.ethan@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Is the Background Information?

B. What Action Is EPA Taking?

A. What Is the Background Information?

The four internal combustion diesel-fired engines are owned and operated by Energy Alternatives, Inc., and installed northeast of the Treasure Island Resort & Casino at the Prairie Island Community Wastewater Treatment Facility (Facility). The total generation capacity of the engines is 7.3 megawatts (MW). Electricity generated at the Facility is not sold for distribution.

Since the potential emissions from the four engines was estimated to be greater than 250 tons per year for nitrogen oxides (NO_X), in accordance with 40 CFR part 52.21(b)(1), the Facility is considered a major stationary source and subject to the PSD permitting requirements. As required by 40 CFR part 52, Energy Alternatives applied to EPA for a PSD permit and conducted a Best Available Control Technology (BACT) analysis, an air quality analysis, and the additional impact analyses. The Federal PSD Construction Permit (No. PSD–PI–R50003–00–01) EPA issued to the Facility contained all applicable part 52 requirements. Within this permit, the Facility also chose to accept a 550 hrs/year operating limit on all four engines combined, restricting the Facility's potential to emit emissions.

Since Energy Alternatives, Inc. is considered a major source, was issued a PSD permit, and is located on tribal land, in accordance with 40 CFR part 71.3(a), the Facility is subject to the Title V permitting requirements of part 71. On February 23, 2004, EPA issued a Federal Permit to Operate (No. V–PI–R50004–03–01) which incorporated all applicable air quality requirements, including any monitoring necessary to ensure compliance with these requirements. In accordance with the requirements of 40 CFR 71.11(d), EPA provided the public with the required 30 days to comment on the draft permit. Since EPA did not receive any written comments on the permits, EPA finalized the permit and provided copies to the applicant, pursuant to 40 CFR 71.11(i).

EPA is not aware of any outstanding enforcement actions against Energy Alternatives, Inc. and believes issuance of these permits is non-controversial.

B. What Action Is EPA Taking?

EPA is notifying the public of the issuance of the PSD and part 71 permits to Energy Alternatives, Inc.

Dated: April 19, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 04–10344 Filed 5–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0122; FRL–7356–8]

DCPA; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0122, must be received on or before June 7, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epamail.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 (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (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. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0122. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 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.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this

unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0122. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2004–0122. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0122.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0122. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Interregional Research Project Number 4 (IR-4), 681 and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 2E6442

EPA has received a pesticide petition 2E6442 from Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of DCPA, or chlorthal dimethyl (dimethyl tetrachloroterephthalate) in or on the raw agricultural commodities Oriental radish, basil, coriander, dill, marjoram, chives, ginseng, celeriac, chicory, mradicchio, parsley (fresh) and parsley (dried) at 2.0, 5.0, 5.0, 5.0, 5.0, 5.0, 2.0, 2.0, 5.0, 2.0, 5.0 and 15 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue in plants is adequately understood based on acceptable studies on onions, turnips, and tobacco. The residues of concern in plants are DCPA, and its metabolites monomethyl tetrachloroterephthalic acid (MTP) and tetrachloroterephthalic acid (TPA) which are the parent and metabolites that are currently regulated. The proposed metabolism of DCPA in plants is via ester hydrolysis. Studies conducted with onion and turnip indicate that the impurity hexachlorobenzene (HCB) is not metabolized appreciably in these plants.

2. *Analytical method.* Three tolerance enforcement methods for plant commodities are published in the Pesticide Analytical Manual (PAM), Vol. II (Section 180.185), as Methods A, B, and C. Residue data submitted in response to the 6/88 Guidance Document were collected using gas chromatography/electron capture (GC/EC) methods similar to the PAM, Vol. II methods. The Agency has found these methods to be adequate for collection of DCPA, HCB, MTP, and TPA residue data from potatoes (including processed commodities), sweet potatoes, broccoli, celery, cucumbers, green and bulb onions, strawberries, sweet and bell peppers, cantaloupes, tomatoes (including processed commodities), summer squash, and processed commodities of beans and cottonseed. The limits of detection (LOD) are 0.01 ppm each for DCPA, MTP, and TPA, and 0.0005 ppm for HCB. These methods are suitable candidates for validation procedures as enforcement methods for plant commodities. Another GC/EC method, similar to those submitted for plants, is available for determining DCPA, MTP, and TPA in milk and beef fat. Recoveries of each compound using 12 samples each of milk and beef fat fortified at 0.01–5 ppm were acceptable. The LOD is 0.01 ppm. The Agency has deemed this method is suitable for its validation and inclusion in PAM, Vol. II pending successful independent laboratory validation. DCPA per se is completely recovered using PAM, Vol. I Multiresidue Protocols D and E (PESTDATA, PAM, Vol. I, Appendix, 8/93). Data submitted by the previous registrant indicate that TPA is not recovered by Protocols B and C. The Agency has indicated that multiresidue testing data on MTP are still required.

3. *Magnitude of residues—i. Oriental radish.* IR-4 has received a request from California for the use of DCPA on oriental radish. IR-4 supports the requested tolerance of 2 ppm on oriental radish based on other existing tolerances.

ii. *Basil.* IR-4 has received a request from California for the use of DCPA on basil. IR-4 supports the requested tolerance of 5 ppm on basil based on other existing tolerances.

iii. *Coriander.* IR-4 has received a request from California for the use of DCPA on coriander. IR-4 supports the requested tolerance of 5 ppm on coriander based on other existing tolerances.

iv. *Dill.* IR-4 has received a request from California for the use of DCPA on fresh dill. IR-4 supports the requested tolerance of 5 ppm on fresh dill based on other existing tolerances.

v. *Marjoram.* IR-4 has received a request from California for the use of DCPA on *marjoram.* IR-4 supports the requested tolerance of 5 ppm on marjoram based on other existing tolerances.

vi. *Chives.* IR-4 has received a request from California for the use of DCPA on chives. IR-4 supports the requested tolerance of 5 ppm on chives based on other existing tolerances.

vii. *Ginseng.* IR-4 has received requests from Wisconsin and North Carolina for the use of DCPA on ginseng. IR-4 supports the requested tolerance of 2 ppm on ginseng based on other existing tolerances.

viii. *Celeriac.* IR-4 has received a request from California for the use of DCPA on celeriac. IR-4 supports the requested tolerance of 2 ppm on celeriac based on other existing tolerances. Chicory: IR-4 has received a request from California for the use of DCPA on chicory. IR-4 supports the requested tolerance of 5 ppm on chicory based on other existing tolerances.

ix. *Radicchio.* IR-4 has received a request from California for the use of DCPA on radicchio. IR-4 supports the requested tolerance of 2 ppm on radicchio based on other existing tolerances.

B. Toxicological Profile

DCPA technical is classified under Toxicity Category IV (practically non-toxic) for acute-oral toxicity and dermal irritation and Toxicity Category III (slightly toxic) for dermal lethal dose $(LD)_{50}$, inhalation lethal concentration $(LC)_{50}$, and eye irritation. DCPA is not a dermal sensitizer. DCPA has been classified as a Group C, possible human carcinogen, based on increased incidence of thyroid tumors in both sexes of the rat (although, only at an excessive dose in the female), and liver tumors in female rats and mice, at doses which were not excessive.

1. *Acute toxicity.* The acute oral LD_{50} values for DCPA in the rat was >5,000 milligrams/kilogram (mg/kg). The acute dermal LD_{50} was >2,000 mg/kg in the rabbit. The 4–hour rat inhalation LC_{50} was >4.48 milligrams/per Liter (mg/L). DCPA was a mild irritant to rabbit skin and eyes. DCPA (performed with a 90% material) did not cause skin sensitization in guinea pigs.

2. *Genotoxicity.* Mutagenicity studies as shown below have demonstrated that

DCPA is non-mutagenic both *in vivo* and *in vitro*. DCPA did not induce a mutagenic response in two independently performed mouse lymphoma forward mutation assays. The nonactivated concentration range was 7.5 to 100 milligrams/milliliter (mg/mL) and the S9-activated range was 15 to 200 mg/mL (MRID 41054822). In an *in vitro* cytogenetic assay, Chinese hamster ovary cells were exposed to DCPA at dose levels of 0, 30, 100, 300, or 1,000 mg/mL for 4 hours both with and without S-9 activation. Cells were harvested at 12 and 18 hours. There were no indications of a clastogenic response as a result of exposure to test material at any dose level (MRID 41054823). DCPA was not genotoxic in two independently performed unscheduled DNA synthesis (UDS) assays in which the concentration ranged from 3 to 1,000 mg/mL (MRID 41054824). An *in vitro* assay for sister chromatid exchange (SCE) in Chinese hamster ovary cells was performed at dose levels of 0, 38, 75, 150, or 300 mg/mL both with and without S9-activation. There was no indication of a positive response; therefore, under the conditions of this assay the test material is negative (MRID 41054825).

3. *Reproductive and developmental toxicity*. A developmental toxicity study with Sprague Dawley rats used doses of 0, 500, 1,000, or 2,000 mg/kg/day given by gavage on gestation days 6–15. No adverse effects on the maternal rats or their offspring were observed. Therefore, the maternal and developmental toxicity no observed effect levels (NOELs) were set at 2,000 mg/kg/day, highest dose tested (MRID 00160685).

Two studies were conducted with New Zealand white rabbits. In the first study, DCPA doses of 0, 500, 1,000, or 1,500 mg/kg/day were given by gavage on gestation days 6–19. There were maternal deaths and adverse clinical signs at all dose levels. In the second study, DCPA doses of 0, 125, 250, or 500 mg/kg/day were given by gavage on gestation days 7–19. None of these levels produced any maternal or developmental toxicity. The second study tested dose levels that overlapped those in the first study. Therefore, when considered together, the no observed adverse effect level (NOAEL) for maternal toxicity can be set at 250 mg/kg and the lowest observed adverse effect level (LOAEL) can be set at 500 mg/kg based on maternal deaths. The developmental toxicity NOAEL can be set at 500 mg/kg. Although, no developmental effects were observed at any of the higher dose levels, a higher NOAEL cannot be set based on the limited number of litters at the higher dose levels.

In a 2-generation reproduction study, female Sprague Dawley rats were fed DCPA at doses of 0, 63, 319, or 1,273 mg/kg/day while males received doses of 45, 233, or 952 mg/kg/day DCPA. These doses were equivalent to 0, 1,000, 5,000, and 20,000 ppm food residue values, which the Agency used in mammalian environmental risk. No effects on reproductive performance in 2 generations with 2 litters per generation were seen. The maternal NOAEL was 63 mg/kg/day. The maternal LOAEL was 319 mg/kg/day, based on decreased body weight/body weight gain. The reproductive NOAEL was 63 mg/kg/day. The LOAEL was 319 mg/kg/day, based on decreased pup body weight. The paternal NOAEL was set at 233 mg/kg/day, and the LOAEL was set at 952 mg/kg/day due to decreased body weight gain. On day 0 of the F2b litters, the diets for the low and mid-dose groups were changed to 18 and 47 mg/kg/day respectively to be able to set a NOAEL for pup body weight. The offspring NOAEL was set at 18 mg/kg/day (200 ppm), and the LOAEL was 47 mg/kg/day (500 ppm) based on decreased body weight. (MRIDs 41750103, 41905201).

4. *Subchronic toxicity*. In a 21–day dermal toxicity study, Charles River CD rats were dermally exposed to DCPA doses of 0, 100, 300, or 1,000 mg/kg/day. No dermal irritation at the site of application was observed. No adverse effects were found; therefore, the NOEL was equal to or greater than 1,000 mg/kg/day, the highest dose tested (MRID 41231803).

CD VAF/Plus Sprague Dawley rats were given 0, 10, 50, 100, 150, or 1,000 mg/kg/day of DCPA in the diet for 90 days. The NOAEL was 10 mg/kg/day. The LOAEL was 50 mg/kg/day, based on increased liver weight and microscopic effects. The treatment-related effects were: Increased weight and centrilobular hypertrophy in the liver; increased accumulation of foamy macrophages in the lung; increased weight, epithelial hyperplasia, and tubular hypertrophy of the kidney; and follicular hypertrophy of the thyroid. There were slight decreases in body weight and food consumption in high dose females only (MRID 41767901).

Male CD-1 mice were given doses of 0, 100, 199, 406, or 1,235 mg/kg/day DCPA and females were given 0, 223, 517, 1049, or 2,198 mg/kg/day DCPA in the diet for 90 days. There were no effects other than minimal histopathological effects on the liver. The NOAEL was 406 mg/kg/day for males and 517 mg/kg/day for females. The LOAEL for males was 1235 mg/kg/day and for females was 1,049 mg/kg/day, based on the liver effects (MRID 41064801).

5. *Chronic toxicity*. Beagle dogs were given 0, 2.5, 25, or 250 mg/kg/day DCPA in the feed for 2 years. Adverse effects were not found. Therefore, the NOAEL was equal to or greater than 250 mg/kg/day (MRID 00083584).

A chronic toxicity and carcinogenicity study was conducted with Sprague Dawley CD rats. The doses of DCPA given in the diet for 2 years were 0, 1, 10, 50, 500 or 1,000 mg/kg/day. The NOAEL was 1 mg/kg/day. The LOAEL was 10 mg/kg/day, with effects observed in the lungs, liver, and thyroid; decreases in thyroid hormone levels in both sexes; and effects in eyes in females. The specific effects were: (1) Increased mortality in males at 1,000 mg/kg/day HDT during the second year; (2) either decreased body weights or decreased body weight gains in both sexes at 1,000 mg/kg/day, and in females at 500 mg/kg/day; (3) changes in hematology and clinical chemistry parameters indicative of liver and kidney toxicity at both 500 and 1,000 mg/kg/day in both sexes; (4) treatment-related increases in thyroid, liver, and kidney weights in both sexes; (5) a dose-related increase in white foci in the lungs, which correlated with an increased incidence of foaming macrophages in both sexes at doses of 10 mg/kg/day and higher; (6) treatment-related exacerbation of chronic nephropathy in both sexes at 50 mg/kg/day and higher; (7) a dose-related increase in centrilobular hepatocytic swelling in both sexes at doses of 10 mg/kg/day and higher; (8) a dose-related increase in liver neoplasms in females; (9) an increase in follicular cell hyperplasia/hypertrophy at 10 mg/kg/day in males and at doses of 50 mg/kg/day and higher in both sexes; (10) decreased T4 (thyroid hormone/thyroxine) values at 10 mg/kg/day in males, and at 50 mg/kg/day and higher in both sexes; and (11) a treatment-related increase in thyroid follicular cell neoplasms in both sexes (MRID 42731001).

In another combined chronic toxicity and carcinogenicity study, CD-1 mice were given DCPA in the diet for 2 years. The doses were 0, 12, 123, 435, or 930 mg/kg/day DCPA in the diet for males and 0, 15, 150, 510, or 1,141 mg/kg/day for females. The NOAEL for systemic effects was 435 mg/kg/day in males; 510 mg/kg/day in females. The systemic lowest observed effect level (LOEL) was 930 mg/kg/day in males; 1,141 mg/kg/day in females, based on liver effects. There were increased liver weights,

increased SDH (sorbital dehydrogenase) and GPT (glutamic-pyruvic transaminase) activities, and increased incidence of hepatocyte enlargement or vacuolation in both sexes at the high dose levels; 930 and 1,141 mg/kg/day for males and females, respectively. There was a significant increase in hepatocellular neoplasms in females at the high dose level of 1,141 mg/kg/day. Corneal opacity was observed in this study (MRID 40958701).

Additionally, a supplementary rat chronic ophthalmology study was conducted to investigate the corneal opacity observed in the mouse study. There was no evidence of ocular toxicity observed in rats fed DCPA in the diet at levels up to 1,000 mg/kg/day for 2 years (MRID 41750102).

6. *Animal metabolism.* In one study, a single oral dose of 14^{C} -DCPA at either 1 or 1,000 mg/kg was given to Sprague-Dawley rats (5 rats/sex/dose level). The major metabolite of DCPA in the urine of both sexes at both dose levels was 4-carbomethoxy-2,3,5,6-tetrachlorobenzoic acid. No radiolabel was excreted in the urine as the parent compound, DCPA (MRID 42155501).

There was a second study in which a single oral dose of 14^{C} -DCPA at either 1 or 1,000 mg/kg was given to Sprague-Dawley rats. Bile was found to be a negligible excretory route for radiolabeled DCPA. At the low dose, 61% of the administered radiolabeled DCPA was excreted in the urine. The percent absorption (urine, blood, bile, cage rinse, and carcass) was 79% of the administered dose. At the high dose, 55% of the administered radiolabel was excreted in the feces or was found in the GIT (gastro-intestinal tract). The percent absorption was 8% of the administered dose (MRID 42155503).

There was a third study in which a single oral dose of 14^{C} -DCPA at either 1 or 1,000 mg/kg was given to Sprague-Dawley rats (3 rats/sex/dose level) to determine the major route of excretion. Urine was the major route at the low dose, and feces was the major route at the high dose. Negligible amounts of radiolabel were found in the tissues examined at 48 hours following dosing. There were no significant differences observed between the sexes at either dose level (MRID 42155502).

In a different study, nonradiolabeled DCPA was administered in single, daily oral doses to Crl:CD BR VAF/Plus rats (15 rats/sex/dose level) for 14 consecutive days at either the 1 or 1,000 mg/kg/day dose level. Twenty-four hours after the 14^{th} dose, a single oral dose of 14^{C}-DCPA (1 or 1,000 mg/kg) was administered to each rat. At the high dose level (both sexes), the majority of the administered 14^{C}-DCPA was unabsorbed and was eliminated in the feces, while at the low dose level (both sexes) the majority of the administered 14^{C}-DCPA was absorbed and excreted in the urine. Radiolabel was found in all tissues examined, and the radiolabel concentration was higher in the high-dose rat tissue than in the same tissue at the low dose level. At 168 hours, radiolabel was still detectable in nearly all tissues at both dose levels and in both sexes. The elimination half-life of radiolabel was calculated to be 22–23 hours at the high dose and approximately 18–hours at the low dose. (MRID 42723201, 42723202).

In another study, Sprague-Dawley rats (5 rats/sex/dose level) were given single or multiple 14–days oral doses of 14^{C}-DCPA (1 or 1,000 mg/kg). The major metabolite of DCPA in the urine of both sexes at both dose levels following both single and multiple dosing was 4-carbomethoxy-2,3,5,6-tetrachlorobenzoic acid. A minor metabolite was tetrachloroterephthalic acid. No radiolabel was excreted in the urine as the parent compound, DCPA (MRID 42723203). Together these studies fulfill GLN 870.7485 (old GLN 85–1) (MRID 43052201).

7. *Metabolite toxicology—i. Hexachlorobeneze (HCB) as a DCPA impurity.* HCB is a recognized impurity in DCPA. The Agency has classified HCB as a B2 (probable human) carcinogen, based on data sets which showed significant increases of tumor incidence in 2 species: Hamsters and rats. In a 130–week feeding study in rats, the NOAEL was 0.08 mg/kg/day. (Effects observed were hepatic centrilobular basophilic chromogenesis.) The dermal absorption factor of HCB is 26.46% (MRID 42651501). At this time no other toxicological endpoints of concern have been identified for HCB.

The Agency risk assessment of HCB was based on levels in the original DCPA source material. Since then, the Agency has acknowledged in RED correspondence that the new registrant committed to reducing HCB concentrations in its source material. Subsequently, the Agency in fact confirmed a new technical registration (granted to AMVAC Chemical Corporation) with HCB concentrations almost two orders lower in magnitude than before. As a result, the potential HCB exposures to humans is concomitantly reduced to a fraction of the potential exposure considered by EPA in its original RED risk assessment.

ii. *Polyhalogenated dibenzo-p-dioxins/dibenzofurans as DCPA Impurities.* Polyhalogenated dibenzo-p-dioxins/dibenzofurans (dioxin/furans) are recognized impurities of DCPA. Of the dioxin/furans, only the 2,3,7,8-tetrachloro-dibenzo-para-dioxin (2,3,7,8-TCDD) congener has been assigned a quantified estimate of its carcinogenic potential. The Agency has classified 2,3,7,8-TCDD as a B2 (probable human) carcinogen based on data sets which showed significant increases of tumor incidence in 2 species: Sprague-Dawley rats and B6C3F1 mice.

Enough data exist, however, regarding the potency of the other congeners to estimate their relative potency in comparison to the 2,3,7,8-TCDD. Therefore, in evaluating the toxicological significance of the dioxin/furan contamination, the Agency converts all of the congener detection values into one value which represents the equivalent 2,3,7,8-TCDD potency. For example, if a product contained 10 parts per billion (ppb) of a dioxin congener other than the 2,3,7,8-TCDD, and if that congener is considered to be only $1/10^{th}$ as potent as 2,3,7,8-TCDD, the Agency would use the equivalent of 1 ppb of 2,3,7,8-TCDD in its risk assessment. DCPA's prior registrant submitted dioxin/furan detection values to the Agency from seven batch samples, as required in the 1987 DCI. During the first sampling, one of the dioxin/furan congeners was detected above the Agency specified level of quantitation (LOQ). The manufacturing process was subsequently altered in an effort to reduce this contamination. (MRID 41241801). Subsequent to this change, none of the dioxin/furan congeners were detected above Agency specified LOQs in the remaining six batch samples. The 2,3,7,8-TCDD equivalency of the dioxin/furans reported to the Agency is approximately 0.1 ppb, which would equal 0.00000001% of the DCPA formulations. The Agency used this contamination value (0.00000001%) to determine exposure values used in the risk assessments for DCPA's reregistration eligibility evaluation. The Agency required registrants to propose certified upper limits for all dioxin/furan congeners for which detection values were reported to the Agency.

The reference dose (RfD) for 2,3,7,8-TCDD is 0.000001 µg/kg/day) based on a LOAEL of 0.001 µg/kg/day from a three-generation feeding study in rats. (Effects at the lowest dose tested included dilated renal pelvises, decreased fetal weight, and changes in the gestational index). An uncertainty factor of 100 was used to account for the interspecies extrapolation and intraspecies variability. An additional uncertainty factor of 10 was used to

account for the lack of a NOAEL. At this time, no other toxicological endpoints of concern have been identified for 2,3,7,8-TCDD.

iii. *Tetrachloroterephthalic acid (TPA) as a DCPA metabolite.* tetrachloro-terephthalic acid (TPA) is one of two DCPA animal metabolites. DCPA fed to lactating goats was metabolized into both TPA and monomethyl tetrachloroterephthalic acid (MTP). It is the TPA metabolite, however, that is found most frequently in the environment after DCPA use. Soil metabolism converts DCPA into TPA, which is known to leach through soil and pollute ground water. Therefore, the prior registrant submitted the following additional studies to specifically assess the toxicity of TPA.

8. *Subchronic toxicity of TPA.* Disodium 2,3,5,6-tetrachloroterephthalic acid was given to Charles River CD rats in the diet for 13–weeks. There were 15 rats/sex/dose group using dose levels of 0, 2.5, 25, 50, or 500 mg/kg/day. There were no adverse effects in either sex at any dose level. The NOAEL is greater than or equal to 500 mg/kg/day, the highest dose tested. The LOAEL cannot be determined (MRID 00100773).

CD Sprague-Dawley rats (10/sex/dose group) were given 2,3,5,6-tetrachloroterephthalic acid via gavage for 30 days at dose levels of 0, 100, 500, or 2,000 mg/kg/day. There were no apparent adverse effects observed at any dose level. The NOAEL is greater than or equal to 2,000 mg/kg/day, the highest dose tested. The LOAEL cannot be determined. (MRID 00158011).

9. *Developmental toxicity of TPA.* In a developmental toxicity study, 25 pregnant Charles River rats/dose group were dosed via gavage on gestation days 6–15 with TPA at dose levels of 0, 625, 1,250, or 2,500 mg/kg/day. The maternal toxicity NOEL was 1,250 mg/kg/day. The maternal LOAEL was set at 2,500 mg/kg/day based on decreased body-weight gain and food consumption. There were no signs of developmental toxicity, therefore, the developmental NOAEL was set at 2,500 mg/kg/day, the highest dose tested. A LOAEL was not determined (MRID 262303).

10. *Mutagenicity of TPA.* TPA did not induce a mutagenic response in the Ames assay or the HGPRT assay with or without metabolic activation (MRID 262302). In the Sister Chromatid Exchange (SCE) assay, TPA did not induce a significant increase in the SCE frequency of Chinese hamster ovary cells, both with and without metabolic activation. TPA did not induce an increase in unscheduled DNA synthesis. In an *in vivo* mouse micronucleus assay, TPA was negative for clastogenicity in females and at best equivocal in males. Based on the overall weight of evidence of no mutagenic response of this compound in other studies, as well as the lack of mutagenicity of the parent DCPA, further testing for mutagenicity is not warranted at this time.

11. *Endocrine disruption.* The toxicology data base for DCPA is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short-term or long-term exposure. These studies revealed no primary endocrine effects due to DCPA.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Tolerances for residues of DCPA in or on raw agricultural commodities are currently expressed as the combined residues of DCPA and its metabolites monomethyl tetrachloroterephthalate (MTP) and tetrachloroterephthalic acid (TPA) calculated as DCPA. At present, no tolerances exist for residues of DCPA in animal commodities. Although, all the data requirements of the Reregistration Guidance had not been met when the Agency issued the RED, the outstanding data were considered to be confirmatory to the reregistration eligibility decision. The Agency determined that sufficient data are available to conduct reasonable anticipated residue assessments.

People may be exposed to residues of DCPA through the diet. Tolerances or maximum residue limits have been established for residues of DCPA in many food and feed crops (see 40 CFR 180.185). EPA has reassessed the DCPA tolerances and found that some are acceptable, others must be revoked because refinements in crop groups must be replaced with new tolerances for the new crop groupings. Acute dietary risk assessments were not necessary since there were no acute toxicological endpoints of concern for DCPA or its impurities. Chronic and carcinogenic dietary risks were assessed, however, due to exposure to DCPA, HCB, and dioxin/furans.

Chronic risk estimates for the U.S. population and all subgroups were well below 100% of the RfD for DCPA, HCB, and dioxin/furans. Based on these estimates, the Agency concluded that DCPA use does not pose a significant chronic dietary risk. Carcinogenic risk estimate for exposure to DCPA, HCB, and dioxin/furans through food were 3.5 x 10^{-7}, and 7 x 10^{-8}, respectively. All of these risk estimates are within the range (zero to 1 x 10^{-6}) generally considered to be negligible by the Agency. Thus, the Agency concluded that DCPA use does not pose a significant excess lifetime cancer risk.

ii. *Drinking water.* The Agency assessed both chronic (non-cancer) and carcinogenic risk due to exposure to DCPA and its metabolites through contaminated ground water and surface water. The Agency used annual contamination averages from five geographic regions as potential drinking water exposure values. The highest annual average was 50 ppb in New York from a turf study. Although, this represents approximately 71% of the health advisories (HA), it only corresponds to 11% of RfD. Even if part of this population were to the maximum 3% of the RfD from other dietary sources, the chronic dietary risk would still be considered minimal.

Individual excess lifetime cancer risk from the New York turf site was 1.7 x 10^{-6}. The next highest risk estimate is based on data from Suffolk County, New York. The risk estimate from that site is 9.7 x 10^{-7}. DCPA's previous registrant voluntarily withdrew from selling the product in Suffolk, New York. Exposure values from all other sites resulted in risks below the Agency's cancer benchmark of 1 x 10^{-6}. Based on these estimates, the Agency concluded that DCPA and its metabolites do not currently pose a significant cancer or chronic non-cancer risk from non-turf uses to the overall U.S. population from exposure through contaminated drinking water.

2. *Non-dietary exposure.* DCPA is currently registered for commercial and residential use. Risk assessments were performed to assess the individual excess lifetime cancer risk from DCPA and HCB resulting from occupational and residential exposure to DCPA. The Agency will not generally allow non-dietary risks to exceed 10^{-4}, except in cases where EPA has determined that benefits exceed the risks.

i. *Occupational exposure.* Risk was estimated for occupational exposures to both DCPA and HCB. The highest risk for both commercial applicators and private applicators is associated with the use of the wettable powder formulation. For the commercial applicator, the highest risk for DCPA was estimated to be 7.5 x 10^{-5} and for HCB (in DCPA) to be 1.9 x 10^{-4}. The Agency is requiring mixer/loader/applicators using DCPA wettable powders to wear a dust-mist respirator fitted with a TC–21 filter to mitigate this risk. Wearing a dust-mist respirator reduces the risks to 4.0 x 10^{-5} and 1.3 x 10^{-4} for DCPA and HCB respectively.

For the private applicator, the highest risk for DCPA was estimated to be 1.6 x 10^{-6} and for HCB (in DCPA) to be 4.6 x 10^{-6}.

ii. *Turfgrass.* Risks to children playing on a treated lawn were assessed for exposure to DCPA and HCB. The risks from DCPA and HCB to children playing on an irrigated lawn are 5.6 x 10^{-7} and 3.9 x 10^{-7}, respectively. The risks from DCPA and HCB to children playing on non-irrigated lawns are 2.0 x 10^{-6} and 2.7 x 10^{-6}, respectively. The Agency is conducting a risk/benefit assessment to determine whether the turf use is eligible for reregistration. However, in the interim, the Agency is requiring that residential lawns be watered after DCPA product use and that reentry not occur until sprays have dried, in an effort to mitigate risks to children.

iii. *Re-entry.* Risk from exposure to DCPA and HCB through worker re-entry into a cucumber field was assessed. Harvesting cucumbers immediately after application resulted in risk estimates of 1.8 x 10^{-4} for DCPA and 3.2 x 10^{-4} for HCB. Delayed re-entry periods only minimally reduced risk estimates. However, the Agency reported in the RED that it believes that the worker exposures are overestimates. These scenarios were based solely on a foliar dissipation study, not on dermal exposure studies. DCPA's current registrant is a member of a task force which will address dermal exposure for hand labor tasks required by various crops, such as cucumber harvesting. The risk assessment will be refined when the task force submits it dermal exposure data.

D. Cumulative Effects

DCPA is a pre-emergent herbicide used to control annual grasses and broadleaf weeds. At this time, the EPA has not made a determination that DCPA and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for these tolerance petitions, it is assumed that DCPA does not have a common mechanism of toxicity with other substances and only the potential risks of DCPA in its aggregate exposure are considered.

E. Safety Determination

DCPA and its metabolites generally are of low acute and chronic toxicity. DCPA has been classified as a Group C, possible human carcinogen. Many food crop uses are registered, however, dietary exposure to DCPA residues in foods is at a low level, as is the cancer risk posed to the general population.

Of greater concern is the risk posed to DCPA handlers, particularly mixers/loaders/applicators, and field workers who come into contact with treated areas following application of this pesticide. Exposure and risk to workers will be mitigated by the use of personal protective equipment required by the Worker Protection Standard. Because the pesticide is a possible human carcinogen, the Agency required mixer/loader/applicators using DCPA wettable powder to wear a dust-mist respirator fitted with a TC-21 filter to mitigate this risk.

Section 4(g)(2)(A) of FIFRA calls for the Agency to determine, after submission of relevant data concerning an active ingredient, whether products containing the active ingredient are eligible for reregistration. The Agency has previously identified and required the submission of the generic (i.e., active ingredient specific) data required to support reregistration of products containing DCPA. The Agency completed its review of these generic data, and determined that the data are sufficient to support reregistration of all products containing DCPA under the conditions specified in the RED. The generic data that the Agency reviewed as part of its determination of reregistration eligibility of were sufficient to allow the Agency to assess the registered uses of DCPA and to determine that DCPA can be used without resulting in unreasonable adverse effects to humans and the environment, if used according to the labels as amended by the RED. The Agency, therefore, found that all products containing DCPA as the active ingredient are eligible for reregistration under the conditions specified in the RED.

F. International Tolerances

No maximum residue limits for DCPA have been established by Codex for any agricultural commodity. Therefore, no compatibility questions exist with respect to U.S. tolerances.

[FR Doc. 04–10288 Filed 5–5–04; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act Notice of Public Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting extension.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons that the Advisory Committee on Diversity for Communications in the Digital Age will hold its third meeting on June 14, 2004. The Federal Communications Commission has decided to postpone the original date of its third meeting, which was scheduled for May 10, 2004. The meeting will now be held at the Federal Communications Commission in Washington, DC on Monday, June 14, 2004. The Diversity Committee was established by the Federal Communications Commission to examine current opportunities and develop recommendations for policies and practices that will further enhance the ability of minorities and women to participate in telecommunications and related industries.

DATES: June 14, 2004, 2 p.m. to 5 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, Room TW–C305, 445 12th St., SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane E. Mago, Designated Federal Officer of the Committee on Diversity, or Maureen C. McLaughlin, Alternate Designated Federal Officer of the Committee on Diversity, (202) 418–2030, e-mail *Jane.Mago@fcc.gov, Maureen.Mclaughlin@fcc.gov.* Press Contact, Audrey Spivak, Office of Public Affairs, (202) 418–0512, *aspivak@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Diversity Committee was established by the Federal Communications Commission to examine current opportunities and develop recommendations for policies and practices that will further enhance the ability of minorities and women to participate in telecommunications and related industries. The Diversity Committee will prepare periodic and final reports to aid the FCC in its oversight responsibilities and its regulatory reviews in this area. In conjunction with such reports and analyses, the Diversity Committee will make recommendations to the FCC concerning the need for any guidelines, incentives, regulations or other policy approaches to promote diversity of participation in the communications sector. The Diversity Committee will also develop a description of best practices within the communications sector for promoting diversity of participation.

Agenda

The June 14, 2004, meeting will include reports from the Diversity Committee's four subcommittees regarding progress towards the final

report to the Commission. The four subcommittees are: Career Advancement, which aims to (a) assess current executive training programs and other career development programs that target minorities and women in the telecom industries; (b) identify recommendations and "best practices" that would facilitate opportunities in upper level management and ownership; and (c) focus both on industry-specific measures, as well as recommendations extending across the telecom sectors; Financial Issues, which aims to (a) identify the obstacles to capital access faced by minorities and women in the telecommunications industries; (b) assess current practices regarding the access to capital; (c) develop recommendations and identify "best practices" to address these obstacles; and (d) focus both on industry-specific measures, as well as issues that extend across the telecommunications sectors; New Technologies, which aims to (a) assess what ownership and career advancement opportunities are available in new and emerging technologies (*e.g.*, broadband, digital television, cable, satellite, low power FM) and the convergence of these technologies; and (b) develop recommendations for facilitating opportunities for minorities and women in new industries as they form; and Transactional Transparency, which aims to (a) identify what enhancements or additions are needed, and develop suggested "best practices" in order to increase the participation of minorities and women; (b) assess current practices of how potential investment opportunities in telecom industries are identified and how that information is disseminated; and (c) focus both on industry-specific measures, as well as recommendations extending across the telecom sectors.

Information concerning the activities of the Diversity Committee can be reviewed at the Committee's Web site *http://www.fcc.gov/DiversityFAC.* Material relevant to the June 14th meeting will be posted there.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. A live RealAudio feed will be available over the Internet; information on how to tune in can be found at the Commission's Web site *http://www.fcc.gov.*

The public may submit written comments to the Committee's Designated Federal Officer before the meeting.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–10463 Filed 5–5–04; 8:45 am]

BILLING CODE 6712–01–P

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 1, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Cross County Bankshares, Inc., Wynne, Arkansas; to acquire 9.90 percent of the voting shares of Bank of Pocahontas, Pocahontas, Arkansas, which will be relocated to Bentonville, Arkansas, prior to his acquisition, and renamed Pinnacle Bank immediately after the acquisition.

2. Lonoke Bancshares, Inc., Lonoke, Arkansas; to acquire 9.90 percent of the voting shares of Bank of Pocahontas, Pocahontas, Arkansas, which will be relocated to Bentonville, Arkansas, prior to this acquisition, and renamed Pinnacle Bank immediately after the acquisition.

3. TrustBanc Financial Group, Inc., Mountain Home, Arkansas; to acquire 9.90 percent of the voting shares of Bank of Pocahontas, Pocahontas, Arkansas, which will be relocated to Bentonville, Arkansas, prior to this acquisition, and renamed Pinnacle Bank immediately after the acquisition.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. America West Bank Members, LC, Layton, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of America West Bank, Layton, Utah.

Board of Governors of the Federal Reserve System, April 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–10276 Filed 5–5–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Request for nominations for public members.

SUMMARY: 42 U.S.C. 229c, section 921 of the Public Health Service (PHS Act), established a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS and the Director of the Agency for Healthcare Research and Quality (AHRQ) on matters related to actions of the Agency to enhance the quality, improve the outcomes, and reduce the costs of health care services, as well as improve access to such services, through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

Seven current members' terms will expire in November 2004. To fill these positions in accordance with the legislative mandate establishing the Council, we are seeking individuals who are distinguished in the conduct of

research, demonstration projects, and evaluations with respect to health care; individuals distinguished in the fields of health care quality research or health care improvement; individuals distinguished in the practice of medicine; individuals distinguished in the other health professions; individuals either representing the private health care sector (including health plans, providers, and purchasers) or individuals distinguished as administrators of health care delivery systems; individuals distinguished in the fields of health care economics, management science, information systems, law, ethics, business, or public policy; and individuals representing the interests of patients and consumers of health care. Individuals are particularly sought with experience and success in activities specified in the summary paragraph above, through which the Agency carries out its work.

DATES: Nominations should be received on or before June 1, 2004.

ADDRESSES: Nominations should be sent to Ms. Deborah Queenan, AHRQ, 540 Gaither Road, Room 3238, Rockville, Maryland 20850. Nominations also may be faxed to (301) 594–1341.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Queenan, AHRQ, at (301) 594–1330.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c, section 921 of the PHS Act, provides that the national Advisory Council for Healthcare Research and Quality shall consist of 21 appropriately qualified representatives of the public appointed by the Secretary of Health and Human Services and, in addition, ex officio representatives from other Federal agencies specified in the authorizing legislation, principally agencies that conduct or support health care research, as well as Federal officials the Secretary may consider appropriate. The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction and programs for AHRQ.

Seven individuals will presently be selected by the Secretary to serve on the Council beginning with the meting in the fall of 2004. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership. Interested persons may nominate one or more qualified persons for membership on the Council. Nominations shall include a copy of the nominee's resume or curriculum vitae, and state that the nominee is willing to serve as a member of the Council. Potential candidates will be asked to provide detailed information concerning their financial interests, consultant positions, and research grants and contracts, to permit evaluation of possible sources of conflict of interest.

The Department is seeking a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and/or physically handicapped candidates.

Dated: April 28, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–10283 Filed 5–5–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures of Family Assessment of Nursing Home Care

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for measures.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is soliciting a voluntary submission by researchers, survey firms, stakeholders and other interested parties of survey instruments, or items from survey instruments, measuring family assessments of nursing home care. The Centers for Medicare & Medicaid Services (CMS) established as a priority, support for the development of a standardized survey for measuring and publicly reporting family and residents' assessments of nursing home care that could be used nation wide, and asked AHRQ for assistance in the development and testing of the survey instruments. A resident survey has been developed that is the process of field testing. The next step is the development of a standardized instrument for investigation of family perspectives on residents' nursing home care. As part of the feasibility study, AHRQ is reviewing existing instruments that capture family members' assessments of resident's nursing home care. To conduct as inclusive a review as possible of successful or informative measures of care, the agency is requesting voluntary submission of such instruments or individual measures along with documentation for administration of the instruments or individual measures, and, if possible, critical evaluations of particular measures or related survey administration techniques. If selected for incorporation into a standardized CAHPS instrument for comparing family assessments of nursing home care, measure(s) will be made freely available to encourage their widespread use and the creation of uniform criteria by which nursing homes can be compared by consumers and other interested individuals and organizations. The final instrument will carry a CAHPS trademark to assure that if it is distributed or implemented as a CAHPS instrument, it will be used in accordance with CAHPS instructions and documentation. It should be noted that though the term "family" is used throughout, the term should be construed broadly to include all persons who periodically observe the care of a nursing home resident (*e.g.*, a "significant other") and, based on their contact, are able to provide the perspective and assessment of a concerned third party regarding the resident's care received in the nursing home.

DATES: Please submit instruments and supporting information on or before July 6, 2004, to Judith Sangl (see address below). AHRQ will inquire and determine whether each submitter wishes to be identified. Submitters will not respond individually to submitters, but will consider all submitted instruments and measures and publicly report the results of the review of the submissions in aggregate. Prior to releasing the names of submitters we will inquire and determine whether each submitter wishes to be identified. Submitters will not be identified with specific items in the final instrument.

ADDRESSES: Submissions should include a brief cover letter, a copy of the instrument or items for consideration and supporting information as specified under "Submission Criteria", below. Submissions may be in the form of a letter or e-mail, preferably with an electronic file in a standard word processing format on a 3½-inch floppy disk or as an e-mail attachment. Electronic submissions are encouraged. Please do not use any acronyms. Responses to this request should be submitted to: Judith Sangl, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Phone: (301) 427–1308, Fax: (301) 427–1341, E-mail: *jsangl@ahrq.gov*,

To facilitate handling of submissions, please include full information about the instrument developer or contact: (a) Name, (b) title, (c) organization, (d)

mailing address, (e) telephone number, (f) fax number, and (g) e-mail address. Also, please submit a copy of the instrument or items to be considered. A copy or citation of relevant peer-reviewed journal articles is also desirable, but not required. For citations, please include the title of the article, author(s), publication year, journal name, volume, issue, and page numbers where the article appears and/or other applicable evidence.

All submissions must include a statement of willingness to grant to AHRQ the right to use and authorize others to use submitted measures and their documentation as part of a CAHPS®-trademarked instrument. This statement must be signed by an individual authorized to act for any holder of copyright on the measure(s) or instrument(s). Authority of signator should be indicated or included. Submitters' willingness to grant to AHRQ the right to use and authorize others to use their measures or instruments means that there can be free access to all measures in the CAHPS® instrument, and free access to the instrument's supportive/administrative information. It is the agency's intention that the CAHPS® instrument for nursing home resident's family member assessment of nursing home care will be made publicly available, free of charge.

FOR FURTHER INFORMATION CONTACT: Judith Sangl, from the Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, (please see contact information above).

Submission Criteria

Instruments submitted should be usable to measure a family member's assessment of a short- or a long-term stay of a nursing home resident, whichever is applicable.

Measures submitted must:

1. Capture the resident's family member's assessment of care in a short/and or long-stay nursing home setting; and,

2. Demonstrate a high degree of reliability and validity.

AHRQ, in collaboration with highly experienced CAHPS investigators, will evaluate all submitted measures and instruments and select one instrument or more likely, measures from various instruments, either in whole or in part, for testing and, if required or appropriate, additional modification. AHRQ will assume responsibility for the final measures set as well as any future modifications to its family assessment of nursing home care instrument. The CAHPS® trademark will be applied to the new instrument which will incorporate and combine the best features of all the submissions as well as any ideas that may develop from reviewing them, and any future modifications to the instrument. As a matter of quality control, there will be warnings that the CAHPS® identification may not be used if any changes are made to the instrument or final measures or if survey administration deviates from the prescribed methods without review and permission of the Agency.

Each submission should include the following information:

- The name of the instrument;
- domain(s);
- language(s) the instrument is available in;
- evidence of cultural/cross group comparability, if any;
- cognitive screening or assessments used;
- selection of most appropriate family member/significant other, if more than one available;
- instrument reliability (internal consistency, test-retest, etc.);
- validity (content, construct, criterion-related);
- response rates;
- cost estimates for data collection;
- methods and results of cognitive testing and field-testing; and,
- description of sampling strategies and data collection protocols, including such elements as mode of administration, informed consent materials, use of advance letters, timing and frequencies of contacts.

In addition, a list of nursing homes in which the instrument has been fielded or counts of the number of nursing homes by state or region, in which the survey has been and/or is being used should also be included in the submission materials. Measures that have been tested or implemented in just one or two research studies or nursing home settings would have more limited value than those tested or implemented more widely, but would be considered on a more individual basis when evaluating the measure for further testing with regard to their inclusion in the CAHPS tool.

Submission of copies of existing report formats developed to disclose findings to consumers and providers is desirable, but not required. Additionally, information about existing database(s) for the instrument(s) submitted is helpful, but not required for submission. Evidence of meeting the validity, reliability, and other criteria may be demonstrated through submission of peer-reviewed journal article(s) or through the best evidence available at the time of submission.

SUPPLEMENTARY INFORMATION:

Background

AHRQ is a leader in developing and testing instruments for measuring consumer experience within the healthcare system of the United States as evidenced by the development of CAHPS®, formerly the Consumer Assessment of Health Plans, which provides information on health plan quality to consumers and purchasers alike. While CAHPS® is highly regarded within the industry and provides valuable information; it does not address family member perspectives on resident care within nursing home settings. Standardization of measures is essential for meaningful comparison of performance across nursing homes and other providers. Use of a standardized measure of family member assessment of nursing home settings provides several benefits including: Comparable information across nursing homes for the public about the quality of care from the family's perspective; data-based recommendations for quality improvement efforts and a data base to stimulate research in this area.

Family members are often the primary decision-makers with regard to nursing home placement and selection. They may also serve in the role of resident advocate after nursing home placement has occurred. Hence, the National Quality Forum (NQF) has cited the need for measures of resident and family satisfaction as a high priority for inclusion in the nursing home measure set. NQF specifically cited the need for rapid development of a freely available and accessible standardized instrument.

In an effort to address the concerns of the industry, the Centers for Medicare & Medicaid Services (CMS) established a priority to examine the feasibility of a standard instrument or measurement for public reporting of family assessments (broadly defined) of nursing home residents' care. Accordingly, AHRQ, through a collaborative process with CMS and other stakeholders, has initiated the process for this project. The steps to advance this initiative include:

- *Stakeholder Meetings:* Public meetings will be held to identify the issues and concerns of interested stakeholders in the healthcare community. Summaries of all meetings will be posted on the AHRQ Web site (*www.ahrq.gov*).
- *Survey Development and Testing:* The process by which measures will be defined and the most useful instruments or measures identified is as follows: Instruments submitted will be evaluated by the CAHPS team of experts in consultation with AHRQ staff to

determine if they meet high priority or common measurement needs and to identify whether additional measure development is required. Until the trademarked version is available, access to and use of draft versions will be limited and subject to certain conditions, *e.g.*, obtaining explicit written permission from AHRQ and in return, agreeing to provide assessments of testing experience with the measures.

• *Implementation Plan:* A description of the final survey process as well as recommendations to implement the final standardized CAHPS® family assessment of nursing home care instrument will be made readily available *e.g.*, on AHRQ and CMS Web sites and will include information related to data collection, analysis, and public reporting.

Dated: April 26, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–10284 Filed 5–5–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–53–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

A Community-based Intervention Model to Promote Neighborhood Participation in the Reduction of *Aedes aegypti* Indices in Puerto Rico—Reinstatement with change—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). The *Aedes aegypti* mosquito transmits dengue, a mosquito-borne viral disease of the tropics. The symptoms of dengue disease include fever, headache, rash, retro-orbital pain, myalgias, arthralgias, nausea or vomiting, abdominal pain, and hemorrhagic manifestations.

Since there is no vaccine available to prevent dengue, prevention efforts are directed to control the vector mosquito. The limited efficacy of insecticides in preventing disease transmission has prompted the search for new approaches involving community participation.

Research in Puerto Rico, where dengue is endemic and intermittently epidemic, has shown that levels of awareness about dengue are very high in the population and that the next step should be the translation of this knowledge into practice (behavior change). To achieve this goal, a model of community participation to prevent and control dengue should be developed. This model of community participation must be an effectively implemented prevention project.

The objective of the dengue prevention project is to develop and evaluate a community-based participation intervention model that will reduce *Aedes aegypti* infestation in a community in Puerto Rico. To accomplish this, two comparable communities in the San Juan, Puerto Rico area will be selected for this study. One community will be a "control community" and the second community will be an "intervened community." Entomologic surveys and person-to-person interviews to assess knowledge, attitudes, and practices (KAP) will be conducted during the project in both communities. The entomologic surveys and person-to-person interviews will be conducted three times during the project: the beginning of the project, the end of the first year of the project, and 18 months after the beginning of the project.

An additional interview will also be conducted in the intervened community to assess the function and significance of artificial containers that hold water. An ethnographic assessment will be performed to determine the resources and needs of the intervened community. The specific dengue prevention activities that the intervened community will perform will be based on results of the initial entomologic survey, KAP, function and significance of artificial containers, and the ethnographic assessment of the community. The total estimated annualized burden is 755 hours.

Forms	Number of respondents	Number of responses/respondent	Average burden/response (in hrs)
KAP Depression scale/Larval survey	400	2	45/60
Informal Interview	3	1	30/60
In-depth Interview	7	1	30/60
Focus Groups	10	2	1.5
Larval Survey (sub-sample)	80	3	30/60

Dated: April 28, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10290 Filed 5–5–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–49–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products, OMB No. 0920–0210 "Reinstatement—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The Comprehensive Smoking Education Act of 1984 (15 U.S.C. 1336 or Pub. L. 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of cigarettes. This legislation also authorizes HHS to undertake research, and submit an annual report to Congress (as deemed appropriate) discussing the health effects of cigarette ingredients. HHS has delegated responsibility for the implementation of this Act to CDC's Office on Smoking and Health (OSH). OSH has collected ingredient reports on cigarette products since 1986. Cigarette smoking is the leading preventable cause of premature death and disability in our Nation. Each year more than 400,000 premature deaths occur as the result of cigarette smoking related diseases. The estimated annualized burden is 1,406 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Cigarette Manufacturers	38	1	37

Dated: April 28, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10291 Filed 5–5–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control and Prevention

[30Day–48–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products, OMB No. 0920–0338—Reinstatement—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 *et seq.*, Pub. L. 99–252) requires each person who manufactures, packages, or imports smokeless tobacco (SLT) products to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of smokeless tobacco products. This legislation also authorizes HHS to undertake research, and submit an annual report to the Congress (as deemed appropriate), discussing the health effects of ingredients in smokeless tobacco products. HHS delegated responsibilities for the implementation of this Act to CDC's Office on Smoking and Health (OSH). The oral use of SLT represents a significant health risk which can cause cancer and a number of non-cancerous oral conditions, and can lead to nicotine addiction and dependence. Furthermore, SLT use is not a safe substitute for cigarette smoking. The estimated annualized burden is 254 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Smokeless Tobacco Manufacturers	6	1	42

Dated: April 28, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10292 Filed 5–5–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–38–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: The Role of Power and Control in Intimate Partner Violence—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

CDC plans to draw a sample of individuals convicted of battering in the

Dallas County Domestic Violence Court, and a sample of men living in Dallas County. The study participants will include two samples of men, who will be asked to complete a survey developed and tested by experts in the field of psychology and sociology. The study will include psychological assessments of attachment depression, anger and sociological assessments of peer support for violence, attitudes toward violence, and attitudes toward sex roles.

The data will be collected to further understand the psychological and sociological correlates of battering (e.g., male battering of female partners), which will in turn assist in developing models for intervention programs. The estimated annualized burden is 899 hours.

Data collection activity	Number of respondents	Frequency of response	Average burden per response (in hours)
Screener In-person Sample	583	1	6/60
Screener *RDD Sample	1,400	1	6/60
**IPV Survey	700	1	1

*Random Digit Dialing Sample.
**Intimate Partner Violence Survey.

Dated: April 28, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10293 Filed 5–5–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Secretary, Department of Health and Human Services (HHS), announces the establishment of the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

This board is established as a result of a consolidation of the Offices of the Director of the National Center for Environmental Health (NCEH), and the Agency for Toxic Substances and Disease Registry (ATSDR).

The Board of Scientific Counselors, NCEH/ATSDR will advise the Secretary, HHS; the Director, Centers for Disease Control and Prevention; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agencies' mission to protect and promote people's health. The board will provide advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board will also provide guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

For information, contact Dr. Tom Sinks, Executive Secretary, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E28, Atlanta, Georgia 30333, telephone 404/498–0003 or fax 404/498–0059.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 30, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10296 Filed 5–5–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

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) and the Agency for Toxic Substances Disease Registry (ATSDR) announce the following committee meeting.

Name: Board of Scientific Counselors (BSC), National Center for Environmental Health (NCEH)/ATSDR.

Times and Dates: 8:30 a.m.–5 p.m., May 20, 2004. 8:30 a.m.–3:30 p.m., May 21, 2004.

Place: The Century Center Facility, 1825 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public for observation, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Secretary, and by delegation, the Director of the Centers for Disease Control and Prevention and the Administrator of the Agency for Toxic Substances and Disease Registry, are authorized under Section 301(42 U.S.C. 241) and Section 311(42 U.S.C. 243) of the Public Health Service Act, as amended, to (1) conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist States and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train State and local personnel in health work.

The Board of Scientific Counselors, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agencies' mission to protect and promote people's health.

The Board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The Board also provides guidance to help NCEH/ATSDR work

more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters To Be Discussed: The agenda items, will include, but are not limited to, an update and discussions on the consolidation of NCEH and ATSDR advisory committees; discussions on peer review proposal plan, the combined research agenda and the Preparedness Workgroup Goals Document; staff will also provide an overview of NCEH/ATSDR strategic directions.

Agenda items are tentative and subject to change.

FOR FURTHER INFORMATION CONTACT: Individuals interested in attending the meeting, please contact Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, Georgia 30303; telephone 404/498–0003, fax 404/498–0059; E-mail: *smalcom@cdc.gov*. The deadline for notification of attendance is May 14, 2004.

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: April 30, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10298 Filed 5–5–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Community Services Block Grant (CSBG); State Capacity Building Mini-Grants

Federal Agency Name: Administration for Children and Families, Office of Community Services.

Funding Opportunity: CSBG T/TA Program—State Capacity Building Mini-Grants.

Announcement Type: Competitive Grant—Initial.

Funding Opportunity Number: HHS–2004–ACF–OCS–ET–0015.

CFDA Number: 93.570.

Due Dates for Applications: The due date for receipt of applications is June 21, 2004.

I. Funding Opportunity Description

The Office of Community Services (OCS) within the Administration for Children and Families (ACF) announces that competing applications will be accepted for a new grant pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training and Educational Services (COATES) Human Services Reauthorization Act of 1998, (Pub. L. 105–285).

The proposed grant will fund up to 10 capacity building grants to CSBG eligible entities during Fiscal Year 2004 to help State CSBG Lead Agencies and State CAA Associations collect and submit electronically, information that supports the new national community action performance indicators.

Definitions of Terms

The following definitions apply:

At-Risk Agencies refers to CSBG eligible entities in crises. The problem(s) to be addressed must be of a complex or pervasive nature that cannot be adequately addressed through existing local or State resources.

Capacity-building refers to activities that assist Community Action Agencies (CAAs) and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or making other cost effective improvements.

Community in relationship to broad representation refers to any group of individuals who share common distinguishing characteristics including residency, for example, the "low-income" community, or the "religious" community or the "professional" community. The individual members of these "communities" may or may not reside in a specific neighborhood, county or school district but the local service provider may be implementing programs and strategies that will have a measurable affect on them. Community in this context is viewed within the framework of both community conditions and systems, *i.e.*, (1) public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Eligible applicants described in this announcement shall be eligible entities, organizations, (including faith based) or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. *See* description of Eligible Entities below.

Eligible entity means any organization that was officially designated as a Community Action Agency (CAA) or a community action program under Section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under Sections 673(1)(A)(I), and 676A of the CSBG Act, as amended by the COATES Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farm worker organizations that received CSBG funding in the previous fiscal year.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Non-profit Organization refers to an organization, including faith-based,

which has "demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low income families and communities." Acceptable documentation for eligible non-profit status is limited to: (1) A copy of a current, valid Internal Revenue service tax exemption certificate; (2) a copy of the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; and/or (3) Articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Outcome Measures are definable changes in the status or condition of individuals, families, organizations, or communities as a result of program services, activities, or collaborations.

Performance Measurement is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Regional Networks refers to CAA State Associations within a region.

Results-Oriented Management and Accountability (ROMA) System: ROMA is a system, which provides a framework for focusing on results for local agencies funded by the Community Services Block Grant Program. It involves setting goals and strategies and developing plans and techniques that focus on a result-oriented performance based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and technical assistance activities and other capacity building activities undertaken with grant funds that will have significant impact, *i.e.* activities should impact at least 50 percent of the eligible entities in a State.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories refer to the Commonwealth of Puerto Rico and American Samoa for the purpose of this announcement.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Priority Area

Community Action Goal 5—"Agencies Increase their Capacity to Achieve Results", Electronic Reporting of National Indicator Information by States.

Program Purpose, Scope and Focus

The Director of the Office of Community Services has set as an agency priority the expanded use of technology to improve community planning, anti-poverty efforts, and agency accountability.

During Fiscal Year 2004, OCS will complete its collaborative effort with State and local partners in the Community Services Network to identify a set of National Community Action Performance Indicators. These indicators will enable OCS to present to the Congress and the Administration useful and accurate outcome information from almost 1000 local eligible entities in all States and territories.

OCS understands that the collection and electronic reporting of National Performance Indicator information will require States and local agencies to either revise or expand existing information systems, or, in some States, to install entirely new data collection and reporting systems. In order to assist State CSBG Lead Agencies and State Community Action Associations, OCS will fund up to 10 State capacity-building grants during Fiscal Year 2004, and an additional 20 grants in Fiscal Year 2005, funds permitting.

Successful applicants for State grants to support electronic reporting of National Performance Indicator information must include in their applications:

1. A description of current information systems used by the State to collect, aggregate, analyze, and report CSBG information, including ROMA outcomes;

2. An assessment of need for revising the current system or creating a new system to collect, aggregate, analyze, and report electronically National Performance Indicator information from all local eligible entities;

3. A plan and time schedule for developing and completing installation of an effective system, including plans for training of State and local agency staff, software and other system purchases;

4. Costs associated with system design, development, testing, and installation, and the allocation of those costs to this grant and other sources of support.

II. Award Information

Funding Instrument Type: Grant.

Category of Funding Activity: ISS Income Security and Social Services.

Anticipated Total Priority Area Funding: $250,000 in FY2004.

Anticipated Number of Awards: Ten.

Ceiling on Amount of Individual Awards: $25,000 per budget and project period.

Floor on Amount of Individual Awards: None.

Average Projected Award Amount: $25,000 per budget and project period.

Project Periods for Award: This announcement is inviting applicants for one-year project periods.

III. Eligibility Information

1. Eligible Applicants

Community Services Block Grant eligible entities, State Community Action Associations including faith-based organizations, nonprofit organizations having 501 (c) (3) status, and nonprofits that do not have 501 (c) (3) status.

Additional Information on Eligibility: As prescribed by the Community Services Block Grant Act (Pub. L. 105–285, Section 678(c)(2), eligible applicants are eligible entities (see definitions), organizations, or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code

(b) A copy of a currently valid IRS tax exemption certificate

(c) A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status

(e) Or any of the items referenced above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Priority will be given to joint applications from State CSBG Lead Agencies and State Community Action Associations.

2. Cost Sharing or Matching

None.

3. Other

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*.

IV. Application and Submission Information

1. Address To Request Application Package

Office of Community Services Operations Center, Attn: Dr. Margaret Washnitzer, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209: Telephone: (800) 281–9519: E-mail: *OCS@lcgnet.com*.

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original and the 2 copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative of the applicant organization, have original signatures, and be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers. The copies may include summary salary information.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants. Gov:

- Electronic submission is voluntary
- When you enter the Grants. Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants. Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov*. You must search for the downloadable application package by the CFDA number."

Application Content

Each application must include the following components:

(a) *Table of Contents*

(b) *Abstract of the Proposed Project*—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

(c) *Completed Standard Form 424*—that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

(d) *Standard Form 424A*—Budget Information-Non-Construction Programs.

(e) *Narrative Budget Justification*—for each object class category required under Section B, Standard Form 424A.

(f) *Project Narrative*—A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.

Application Format

Each application should include one signed original application and two additional copies of the same application.

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives must not exceed 30 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

Required Standard Forms

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application

Applicants must make the appropriate certification of their compliance with all Federal statues relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Additional Requirements

(a) The application must contain a signed Standard Form 424, Application for Federal Assistance, a Standard Form 424–A, Budget Information, and signed Standard From 424–B, Assurance—Non-Construction Programs, completed according to instructions provided in this Program Announcement.

The Forms SF–424 and SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets the requirements set forth in this announcement;

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the "Funding Opportunity Description" section of this announcement;

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants." The forms are located on the Web at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Project Summary Abstract: Provide a one page (or less) summary of the project description with reference to the funding request.

Full Project Description Requirements: Describe the project clearly in 30 pages or less (not counting supplemental documentation, letters of support or agreements) using the following outline and guidelines. Applicants are required to submit a Full Project Description and must prepare the project description statement in accordance with the following instructions. The pages of the project description must be numbered and are limited to 30 typed pages starting on page 1 with the "Objectives and Need for Assistance". The description must be double-spaced, printed on only one side, with at least one inch margins. Pages over the 30 page limit will be removed from the competition and will not be reviewed.

It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with the evaluation criteria and adheres to the page limitation. In addition, applicants should be mindful of the importance of preparing and submitting applications using language, terms, concepts and descriptions that are generally known by the Community Services Block Grant (CSBG) network.

The maximum number of pages for supplemental documentation is 10 pages. The supplemental documentation, subject to the 10-page limit, must be numbered and might include brief resumes, position descriptions, proof of non-profit status, news clippings, press releases, etc. Supplemental documentation over the 10-page limit will not be reviewed.

Applicants must include letters of support or agreement, if appropriate or applicable, in reference to the project description. Letters of support are not counted as part of the 30-page project description limit or the 10-page supplemental documentation limit. All applications must comply with the following requirements as noted:

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

3. Submission Dates and Times

The closing time and date for receipt of applications is any time before 4:30 p.m. eastern standard time (e.s.t.) on June 21, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services' Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209 Attention: Barbara Ziegler Johnson. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern standard time (e.s.t.), at the U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services' Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, between Monday and Friday (excluding federal holidays). This address must appear on the envelope/package containing the application with the note: "Attention: Barbara Ziegler Johnson". Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

ACF will not send acknowledgements of receipt of application materials.

Required Forms:

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Abstract of Proposed Project	Brief abstract that identifies the type of project, the target population and the major elements of the proposed project.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Completed Standard Form 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Completed Standard Form 424A	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Narrative Budget Justification	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Certification regarding lobbying	As described above. and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

Additional Forms:

Private-non-profit organizations may submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants".

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on: *http://www.acf.hhs.gov/programs/ofs/form.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant.

The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities that are needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

6. Other Submission Requirements

Submission by Mail: An Applicant must provide an original application with all attachments, signed by an authorized representative and two complete copies. The application must be received at the address below by 4:30 p.m. eastern standard time (e.s.t.) on or before June 21, 2004. Applications should be mailed to: U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services' Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, ATTN: Barbara Ziegler Johnson.

For Hand Delivery: Applicants must provide an original application with all attachments, signed by an authorized representative and two complete copies. The Application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services' Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209 Attention: Barbara Ziegler Johnson. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

V. Application Review Information

1. Criteria

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under the Program Narrative Statement by OMB Approval Number 0970–0139.

The project description is approved under OMB Control Number 0970–0139. 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.

Public reporting burden for this collection is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

Instructions: ACF Uniform Project Description (UPD)

The following are instructions and guidelines on how to prepare the "project summary/abstract" and "Full Project Description" sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). The UPD was approved by the Office of Management and Budget (OMB), Control Number 0970–0139, expiration date 12/31/2003. The generic UPD requirement is followed by the evaluation criterion specific to the Community Services Block Grant legislation.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Account for all functions or activities identified in the

application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical innovations, reductions in cost or time or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example such terms as the "number of people served." When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

2. Evaluation Criteria

Evaluation Criterion I: Approach (Maximum: 35 Points)

Factors:

(1) The work program is results-oriented, approximately related to the legislative mandate and specifically related to the priority area under which funds are being requested. Application addresses the following: Specific outcomes to be achieved; performance targets that the project is committed to achieving, including a discussion of and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, the level of support from the applicant organization; past performance in similar work; and specific resources contributed to the project that are critical to success.

(2) The application defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the description of the particular priority area.

Evaluation Criterion II: Organizational Profiles (Maximum: 25 Points)

Factors:

(1) The application demonstrates that it has experience and a successful record of accomplishment relevant to the specific activities it proposes to accomplish.

(2) If the application proposes to provide training and technical assistance, it details its abilities to provide those services on a nationwide basis. If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization.

(3) The application fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project.

(4) The application describes how applicant will involve partners in the Community Services Network in its activities. Where appropriate, application describes how applicant will interface with other related organizations.

(5) If subcontracts are proposed, the application documents the willingness and capacity of the subcontracting organization(s) to participate as described.

Evaluation Criterion III: Objectives and Need for Assistance (Maximum: 20 Points)

Factors:

(1) The application documents that the proposed project addresses vital needs related to the program purposes and provides statistics and other data and information in support of its contention.

(2) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, CAAs and local service providers and/or State and Regional organizations of CAAs and other local service providers.

Evaluation Criterion IV: Results or Benefits Expected (Maximum: 15 Points)

Factors:

(1) The application describes how the project will assure long-term program and management improvements for State CSBG offices, CAA State and/or regional associations, CAAs and/or other local providers of CSBG services and activities.

(2) The application indicates the types and amounts of public and/or private

resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

(3) If the application proposes a project with a training and technical assistance focus, the application indicates the number of organizations and/or staff that will benefit from those services.

(4) If the application proposes a project with data collection focus, the application describes the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

(5) If the application proposes to develop a symposium series or other policy-related project(s), the application identifies the number and types of beneficiaries.

(6) The application describes methods of securing participant feedback and evaluations of activities.

Criterion V: Budget and Budget Justification (Maximum: 5 Points)

Factors:

(1) The resources requested are reasonable and adequate to accomplish the project.

(2) Total costs are reasonable and consistent with anticipated results.

2. Review and Selection Process

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

All applications must comply with the following requirements except as noted:

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: The timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

VI. Award Administration Information

1. Award Notices

Following approval of the application selected for funding, ACF will mail a written notice of project approval and authority to draw down project funds. The official award document is the Financial Assistance Award that specifies the amount of Federal funds approved for use in the project, the project and budget period for which support is provided and the terms and conditions of the award. The Financial Assistance Award is signed and issued via postal mail by an authorized Grants Officer.

ACF will notify unsuccessful applicants after the award is issued to the successful applicant.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental).

3. Special Terms and Conditions of Awards

None.

4. Reporting Requirements

All grantees are required to submit semi-annual program reports and semi-annual expenditure reports (SF–269) with final reports due 90 days after the project end date. A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

Program Office Contact: Dr. Margaret Washnitzer, Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *OCS@lcgnet.com,* Phone: 1–800–281–9519.

Grants Management Office Contact: Barbara Ziegler Johnson, Team Leader, Office of Grants Management, Division of Discretionary Grants, Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *OCS@lcgnet.com,* Phone: 1–800–281–9519.

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: April 27, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–10088 Filed 5–5–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0565]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Food and Drug Administration Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the

Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 7, 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 written 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 INFORATION CONTACT: JonnaLynn Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Food and Drug Administration Rapid Response Surveys—(OMB Control Number 0910–0500—Extension)

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. Under section 519 of the act (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device-related deaths, serious injuries, and malfunctions to FDA, to require user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process. FDA's regulations governing application for agency approval to market a new drug (21 CFR part 314) and regulations governing biological products (21 CFR part 600) implement these statutory provisions. Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch reporting systems using FDA Forms 3500 and 3500A (OMB control number 0910–0291) and the vaccine adverse event reporting system. FDA is seeking OMB clearance to collect vital information via a series of rapid response surveys. Participation in these surveys will be voluntary. This request covers rapid response surveys for community based health care professionals, general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), other health care professionals, patients, consumers, and risk managers working in medical facilities. FDA will use the information gathered from these surveys to obtain quickly vital information about medical product risks and interventions to reduce risks so the agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

In the **Federal Register** of January 7, 2004 (69 FR 923), FDA published a 60–day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	30 (maximum)	6,000	0.5	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA projects 30 emergency risk-related surveys per year with a sample of between 50 and 200 respondents per survey. FDA also projects a response time of 0.5 hours per response. These estimates are based on the maximum sample size per questionnaire that FDA can analyze in a timely manner. The annual frequency of response was determined by the maximum number of questionnaires that will be sent to any individual respondent. Some respondents may be contacted only 1 time per year, while other respondents may be contacted several times annually, depending on the human drug, biologic, or medical device under evaluation. It is estimated that, given the expected type of issues that will be addressed by the surveys, it will take 0.5 hours for a respondent to gather the requested information and fill in the answers.

Dated: April 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–10267 Filed 5–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the Illinois Institute of Technology's National Center for Food Safety and Technology; Notice of Intent to Accept and Consider a Single Source Application; Availability of Funds for Fiscal Year 2004

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) is announcing its intent to accept and consider a single source application for

the award of a cooperative agreement to the Illinois Institute of Technology (IIT) to support the National Center for Food Safety and Technology (NCFST). FDA anticipates providing $2,750,000 (direct and indirect costs) in fiscal year 2004 in support of this project. Subject to the availability of Federal funds and successful performance, 4 additional years of support up to $5,000,000 per year (direct and indirect) will be available.

DATES: Submit applications by June 7, 2004.

ADDRESSES: Application forms are available from, and completed applications should be submitted to Maura Stephanos, Division of Contracts and Grants Management (HFA–531), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7183. If an application is hand-carried or commercially delivered, it should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857, FAX: 301–827–7101, e-mail: *mstepha1@oc.fda.gov*. Do not send the application to the Center for Scientific Review, National Institutes of Health (NIH). An application not received by FDA in time for orderly processing will be returned to the applicant without consideration. FDA can not receive an application electronically.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects contact: Maura Stephanos (see **ADDRESSES**).

Regarding the programmatic aspects contact: Donald Zink, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1693, FAX: 301–436–2632, e-mail: *dzink@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing its intention to accept and consider a single source application from IIT (RFA–FDA–CFSAN–04–1) to support the NCFST. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100). The cooperative agreement is intended to maintain and facilitate the further development of NCFST for the purpose of enhancing food safety to the benefit of the public. Specifically, NCFST is expected to maintain its collaborative research program involving FDA, academia, and the food industry; to continue to focus its research and outreach efforts on the safety of food processing and processed foods; to continue to maintain its food safety library resources; and to maintain and utilize its unique pilot plant resources to support the development and validation of new and emerging food processing technologies.

II. Background

In the **Federal Register** of May 3, 1988 (53 FR 15736), FDA published a request for applications for a cooperative agreement to establish a National Center for Food Safety and Technology, which would join the resources of government, academia, and industry in a consortium to study questions of food safety. FDA awarded the cooperative agreement to IIT in September 1988. The applications received in response to this announcement were competitively reviewed by a panel of non-FDA food scientists, and the award to IIT was approved by the National Advisory Environmental Health Science Council in September 1988.

In the **Federal Register** notices of September 10, 1991 (56 FR 46189), May 12, 1994 (59 FR 24703), and July 22, 1999 (64 FR 39512), FDA published notice of its intention to limit consideration for the award of a cooperative agreement to IIT to support the NCFST. FDA awarded the cooperative agreement to IIT on September 30, 1991, September 26, 1994, and September 27, 1999, respectively, following competitive review of the applications by a panel of non-FDA food scientists. The award was approved by the National Advisory Environmental Health Sciences Council in September 1991, September 1994, and September 1999, respectively.

Under the cooperative agreement, NCFST was established by IIT to bring together the food safety and technology expertise of academia, industry, and FDA for the purpose of enhancing the safety of the food supply in the common goal of enhancing and improving the safety of food for U.S. consumers. NCFST is structured so that representatives of participating organizations play a role in establishing policy and administrative procedures, as well as identifying long and short-term research needs. With this organizational structure, NCFST is able to build cooperative food safety programs on a foundation of knowledge about current industrial trends in food processing and packaging technologies, regulatory perspectives from public health organizations, and fundamental scientific expertise from academia. The structure and programs at NCFST positioned the center as a key component of FDA's food safety and security program. Specifically, the work at NCFST focuses on the development and evaluation of new food processing technologies and preventive technologies targeted to reduce or eliminate harmful chemical and microbial contamination of foods. Also, the center is the focal point for the agency's program on food packaging development and evaluation. The work at NCFST complements and feed into other activities at the Joint Institute for Food Safety and Applied Nutrition at the University of Maryland. NCFST is still unique in that CFSAN's Division of Food Processing and Packaging is located at the center to facilitate the kind of close relationship between academia, government and industry that the project requires. Scientists from all three sectors can work together in the labs and pilot plant of the center on projects of common interest. Finally, IIT has cultivated a base of continuing support from the food industry in the form of industry members who contribute financial support to the center and provide management direction to the center to ensure that industry needs are addressed. There is not another existing center where FDA has access to the industry relationships and research resources present at NCFST.

III. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint a project officer or co-project officers who will actively monitor the FDA-supported program under this award.

2. FDA shall have prior approval on the appointment of all key administrative and scientific personnel proposed by the grantee.

3. FDA will be directly involved in the guidance and development of the

program and of the personnel management structure for the program.

4. FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and, where appropriate, co-authorship of publications.

IV. Availability of Funds

It is anticipated that FDA will fund this cooperative agreement at a level approximately $2,750,000 (direct and indirect costs) for the first year. An additional 4 years of support up to approximately $5,000,000 (direct and indirect costs) each year will be available, depending upon fiscal year appropriations, and successful performance.

V. Reasons for Single Source Selection

FDA believes that there is compelling evidence that IIT is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. IIT's Moffett Campus, where NCFST is located, is a unique research facility which includes an industrial-size pilot plant and smaller pilot plants for food processing and packaging equipment, a pathogen containment pilot plant, a packaging laboratory, analytical laboratories, offices, containment facilities, classrooms, and support facilities which permit research from benchtop to industrial-scale. The industrial-size pilot plant is built to accommodate routine food processing and packaging research in a commercial atmosphere. The physical layout of the facility provides maximum versatility in the use and arrangement of equipment of both commercial and pilot size, and in the capability to simultaneously operate several different pieces of equipment without interference with each other. In addition to facilities to conduct routine processing research, there are facilities suitable for more complex research, notably a pathogen containment pilot plant research facility, funded by the State of Illinois, which has been used to study the survival of pathogens in aged cheeses. Other facilities include smaller containment facilities in which research involving use of components that may be potentially hazardous, such as pathogens in pasteurization or modified atmosphere packaging research, may be conducted.

Since 1988, IIT has provided an environment in which scientists from diverse backgrounds such as academia, government, and industry, have brought their unique perspectives to focus on contemporary issues of food safety. NCFST functions as a neutral ground where scientific exchange, about generic food safety issues, occurs freely and is channeled into the design of cooperative food safety programs. NCFST has become a center of cutting edge technologies, such as high pressure processing, pulsed electric field processing, electrical resistance processing, ultraviolet processing, and high pressure processing. Ongoing research on packaging materials is focused on providing more alternatives for use with irradiation. A workshop, with participation by representatives of government, academia, and industry, was held to discuss the use of irradiation as an intervention to prevent microbial contamination of foods and the need to alternative packaging materials for use with this technology. This led to the development of cooperative research on the safety of polymeric packaging materials for in-package irradiation. This type of research fills existing gaps in knowledge and expertise associated with improving the safety of foods at a time when concern about food contamination and resultant illnesses is high. Most recently, NCFST has gained expertise in conducting research under biosafety level 3 conditions and is in the process of renovating a facility to accommodate this type of research.

This cooperative research will provide fundamental food safety information, in the public domain, for use by all segments of the food science community in product and process development, regulatory activities, academic programs, and consumer programs. A particular use of this type of data by both industry and public health agencies is in hazard analysis critical control point (HACCP) and other types of preventive control programs. Food manufacturers will use the information in the design of HACCP programs, for use in their plants, which prevent food safety hazards before they occur and enhance the safety of the final product. Public health agencies can design investigational techniques to meet the needs of HACCP systems used in manufacturing plants.

An academic degree program (which is not part of the cooperative agreement) in food safety science has been underway for several years at IIT. The program produces graduates with a foundation in food science and technology with specialization in food safety. Graduates from this program will manage quality control, safety assurance, and HACCP programs in industry. They will design equipment and processes for use in the production and packaging of safe food products. In the public sector, regulatory and other public health organizations, these graduates will evaluate the adequacy of processing and packaging parameters to produce safe end products and they will manage regulatory and information programs enhancing the safety of the food supply and consumer knowledge about the food supply. Graduate students from IIT are gaining hands-on experience in food safety by participating in the cooperative food safety research program. Several masters of science degrees that included research conducted on cooperative projects have been granted by IIT, in disciplines such as engineering, since the inception of NCFST.

Collaboration between the public and the private sector is an efficient means for both to remain current with scientific and technical accomplishments from a food safety perspective. These collaborative programs will produce generic knowledge and expertise to be used by all segments of the food processing and packaging industry, as well as by public health organizations, regulatory agencies, and academic institutions in the performance of their roles in the food science community. The trend toward use of HACCP and other types of preventive programs in both the domestic and international food industry as a means of assuring safety of products and as a basis for harmonizing regulatory activities, is but one example of the need for and use of this food safety knowledge and expertise. Technology transfer mechanisms, which are developing out of the cooperative food safety programs, will facilitate the movement of advanced food processing and packaging technologies into the marketplace, while assuring the safety of those products.

VI. Submission Requirements

The original and two copies of the completed grant application form PHS 398 (rev. 5/01) with copies of the appendices for each of the copies, should be submitted to Maura Stephanos (see **ADDRESSES**). The outside of the mailing package should be labeled "Response to RFA–FDA–CFSAN–04–1". The application will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before (see **DATES** section). Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the Public Health Service (PHS) to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

VII. Reporting Requirements

An annual financial status report (FSR) (SF–269) is required. The original and two copies of the report must be submitted to FDA's Grants Management Officer within 90 days of the budget period expiration date of the agreement. Failure to file an annual FSR in a timely fashion may be grounds for suspension or termination of the agreement.

An annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report.

A final program progress report, FSR and invention statement must be submitted within 90 days after expiration of the project period of the cooperative agreement.

VIII. Review Procedures and Evaluation Criteria

A. Review Procedures

The application submitted by IIT will first be reviewed by grants management and program staff for responsiveness. The requested budget must not exceed $2,750,000 (direct and indirect costs) for the first year. The application will be considered nonresponsive if it is not in compliance with this document. If the application is found to be nonresponsive, it will be returned to the applicant without further consideration.

The application submitted by IIT will undergo noncompetitive dual peer review. The application will be reviewed for scientific and technical merit by an ad hoc panel of experts based upon the applicable evaluation criteria. If the application is recommended for approval, it will then be presented to the National Advisory Environmental Health Sciences Council for their concurrence.

B. Review Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The application clearly demonstrates an understanding of the purpose and objectives of the cooperative agreement regarding a collaborative food safety and security program.

2. The application clearly describes the steps and a proposed schedule for planning, implementing, and accomplishing the activities to be carried out under the cooperative agreement. The application presents a clear plan and schedule of steps to accomplish the goals of the cooperative agreement.

3. The application establishes the applicant's ability to perform the responsibilities under the cooperative agreement including the availability of appropriate staff and sufficient funding.

4. The application specifies the manner in which interaction with FDA will be maintained throughout the life of the project.

5. The application specifies how IIT will monitor progress of the work under the cooperative agreement and how progress will be reported to FDA.

6. The application shall include a detailed budget that shows the following items: (1) Anticipated costs that are allowable and allocable to the project; and (2) the sources of funds to meet those needs.

IX. Mechanism of Support

Support for this project will be in the form of a cooperative agreement. This agreement will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52, 45 CFR part 74, and PHS grants policy statement. The regulations issued under Executive Order 12372 do not apply. The length of support will be 1 year. Cost sharing or matching is not a requirement of this program. The NIH modular grant program does not apply to this FDA program.

X. Dun and Bradstreet Number Requirement

Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet Number (DUNS) to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a 9-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

XI. Legend

Unless disclosure is required under the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: April 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–10266 Filed 5–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Healthcare Integrity and Protection Data Bank: Change in Self-Query Fee

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: The Department is authorized under 45 CFR part 61, the regulations implementing the Healthcare Integrity and Protection Data Bank (HIPDB), to assess a fee on all requests for information, except requests from Federal agencies. In accordance with the HIPDB regulations, we are announcing a two-dollar decrease in the fee to practitioners, providers, and suppliers who request information about themselves (self-query) from the HIPDB. The new fee to self-query the HIPDB will be $8.00. There will be no change to the $4.25 charged for each query submitted by authorized entities to access the data bank.

EFFECTIVE DATE: The fee is effective on July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Management and Policy, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

User Fee Amount

Section 1128E(d)(2) of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, specifically authorizes the establishment of fees for the costs of processing requests for disclosure and for providing information from the Healthcare Integrity and Protection Data Bank (HIPDB). Final regulations at 45 CFR part 61 set forth the criteria and procedures for information to be reported to and disclosed by the HIPDB. The Act also requires that the Department recover the full costs of operating the HIPDB through such user fees. In determining any changes in the amount of the user fee, the Department employs the criteria set forth in § 61.13(b) of the HIPDB regulations.

Specifically, § 61.13(b) states that the amount of each fee will be determined based on the following criteria:

- Direct and indirect personnel costs;

- Physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;
- Agency management and supervisory costs;
- Costs of enforcement, research and establishment of regulations and guidance;
- Use of electronic data processing equipment to collect and maintain information, *i.e.*, the actual cost of the service, including computer search time, runs and printouts; and
- Any other direct or indirect costs related to the provision of services.

The current fee structure of $10.00 for each self-query by a practitioner, provider, or suppler was announced in a **Federal Register** notice on March 3, 2000 (65 FR 11589). Based on the above criteria and our analysis of operational costs and the comparative costs of the various methods for filing and paying for queries, the Department is now lowering the self-query fee by two dollars—from $10.00 to $8.00.

When an authorized self-query is submitted for information by a practitioner, provider, or supplier, the appropriate total fee will be $8.00 multiplied by the number of individuals or organizations about whom the information is being requested.

In order to minimize administrative costs, the Department will continue to accept payment for self-queries only by credit card. The HIPDB accepts Visa, MasterCard, and Discover. To submit queries, practitioners, providers, and suppliers must use the HIPDB Web site at *http://www.npdb-hipdb.com*.

The Department will continue to review user fees periodically for the HIPDB, and will revise such fees as necessary. Any future changes in fees and their effective date will be announced through notice in the **Federal Register**.

Examples

Query method	Fee per name in query, by method of payment	Examples
Self-query	$8.00	10 self-queries: 10 × $8.00 = $80.00.

Dated: April 12, 2004.

Dara Corrigan,

Acting Principal Deputy Inspector General.

[FR Doc. 04–10330 Filed 5–5–04; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the fourth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to 5 p.m. on June 14, 2004, and 8 a.m. to 3 p.m. on June 15, 2004, at the Marriott Hotel Bethesda at 5151 Pooks Hill Road, Bethesda, Maryland. The meeting will be webcast. The meeting will be open to the public with attendance limited to space available.

The first half of the first day will be devoted to an informational update on the status of genetic nondiscrimination legislation and presentation and discussion of an information gathering activity conducted by the Committee's education task force. In addition, the Committee will be reviewing a draft resolution on genetics education and training. The second half of the first day will consist of discussion and deliberation on a draft report on the issue of coverage and reimbursement for genetic technologies. The second day will be devoted to discussions around a draft resolution on the issue of direct-to-consumer marketing and consideration of a draft Vision Report. Time will be provided each day for public comment.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues.

The draft meeting agenda and other information about SACGHS, including information about access to the webcast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*. Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *sc112c@nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

Dated: April 29, 2004.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10321 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the fourth meeting of the Secretary's Advisory Committee on Genetics, Health, and Society, (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to 5 p.m. on June 14, 2004, and 8 a.m. to 3 p.m. on June 15, 2004, at the Marriott Hotel Bethesda, at 5151 Pooks Hill Road, Bethesda, Maryland. The meeting will be webcast. The meeting will be open to the public with attendance limited to space available.

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The draft meeting agenda and other information about SACGHS, including information about access to the webcast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*. Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *sc112c@nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10322 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee I—Career Development.

Date: June 13–15, 2004.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6161 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10324 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Special Emphasis Panel for two types of Grant Applications.

Date: June 17–18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Suites Alexandria, 801 North Saint Asaph Street, Alexandria, VA 22314.

Contact Person: Marvin L Salin, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC8329, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10325 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell disease Advisory Committee.

Date: June 7, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: Discussion of program policies and issues.

Place: National Institutes of Health, 6701 Rockledge Drive, Conference Room 9112, Bethesda, MD 20892.

Contact Person: Charles M. Peterson, MD, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0080.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10326 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Review of Conference Applications (R13s).

Date: May 21, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Judy S. Hannah, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, (301/435–0287.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10327 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 3, 2004.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Division of Extramural Activities, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2463, *kittc@niams.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-governmental employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS.)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10319 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C.. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Development of Immune Monitoring Reagents & MHC Typing Technologies for Non-Human Primates.

Date: May 24, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *qvos@hiaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10323 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 2, 2004.

Time: 8:30 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Glen H Nuckolls, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis, Musculoskeletal, and Skin Diseases, 6701 Democracy Boulevard, Bldg. 1, Ste 800; Bethesda, MD 20892, 301–594–4974, *nuckollg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10328 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; "Medications Development for Stimulant Dependence."

Date: May 11, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road; Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist; Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SBIR–II: "A New Approach to Proteomics by Applying MALD/Ion Mobility to Tissue Imaging."

Date: May 13, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "High-throughput Genome Wide Scan for drug Addiction Loci."

Date: May 19, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS.)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10329 Filed S–S–04;8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBSR Conflicts.

Date: May 6, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human Brain Project/Neuroinformatics.

Date: May 26, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: April 29, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–10320 Filed 5–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Department of the Interior

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, May 14, 2004, Time 1:30 p.m. to 4 p.m.

ADDRESSES: America On Wheels (Former A&B Meat Packing Bldg.), 5 North Front Street, Allentown, PA 18102.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988, and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton PA 18042, (610) 923–3548.

Dated: April 30, 2004.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 04–10295 Filed 5–5–04; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's 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. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Reporting Center for Amphibian Malformations.

OMB Approval No.: 1028–0056.

SUMMARY: The Collection of information referred herein applies to a World-Wide Web site that permits individuals who observed malformed amphibians or who inspect substantial numbers of normal or malformed amphibians to report those observations and related information. The Web site is termed the North American Reporting Center for Amphibian Malformations. Information is used by scientists and Federal, State, and local agencies to identify areas where malformed amphibians occur and the rates of occurrence.

Estimated Completion Time: 20 minutes.

Estimated Annual Number of Respondents: 450.

Frequency: Once.

Estimated Annual Burden Hours: 150 hours.

Affected Public: Primarily U.S. and Canadian residents.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, Telephone (703) 648–7313, or go to the Web site *(http://frogweb.nbii.gov/narcam/).*

Dated: April 30, 2004.

Susan D. Haseltine,

Associate Director for Biology.

[FR Doc. 04–10302 Filed 5–5–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Closure Order Establishing Prohibitions at Folsom Lake, CA

AGENCY: Bureau of Reclamation.

ACTION: Notice of closure.

SUMMARY: The Bureau of Reclamation (Reclamation) is restricting access to property adjacent to the Folsom left wing dam. The closure notice affects the roadway from the left wing dam, southeast to the pipe gate located between the wing dam and East Natoma Street (approximately .8 miles). The closure notice affects the paved Overlook area immediately adjacent to the Folsom left wing dam. The closure notice affects the property between the toe of the left wing dam, the American River and the State of California, Department of Corrections, Folsom Prison facility.

Note: Reclamation is preparing an Environmental Impact Statement that will identify the impacts of the Folsom Dam Road Closure. This closure notice may be modified as appropriate in accordance with the Record of Decision associated with the Folsom Dam Road Closure, Environmental Impact Statement.

DATES: The closure is effective April 19, 2004, and will remain in effect indefinitely.

ADDRESSES: A map is available for inspection at the Reclamation's Central California Area Office, located at 7794 Folsom Dam Road, Folsom, California, 95630.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Mid-Pacific Region Public Affairs Office at (916) 978–5100.

SUPPLEMENTARY INFORMATION: This action is being taken under 43 CFR part 423.3 to improve facility security and public safety. This closure notice will allow Reclamation to adjust security officer posts and position barriers such that access will be improved to the State of California, Department of Corrections, firing range; access will be improved to the water conveyance system operated and maintained by city of Folsom personnel; access will be improved to the Bureau of Land Management storage area located on Reclamation property; and, access will be improved to the U.S. Army Corps of Engineers, Resident Office site.

Reclamation will be prohibiting motor vehicle and pedestrian access to the affected area. The following acts are prohibited in the closure area:

(a) Operating a motor vehicle on the roadway or any part thereof to include stopping, standing, or parking a motor vehicle in the affected area.

Exceptions: Reclamation employees acting within the scope their employment, operations, maintenance and construction personnel that have expressed authorization from Reclamation; California Department of Corrections, law enforcement and fire department officials, and others who have received expressed written authorization from the Bureau of Reclamation to enter the closure area.

(b) Pedestrians, bicyclist and equestrians will not be permitted in the area affected by the closure.

(c) Vandalism or destroying, injuring, defacing, or damaging property or real property that is not under one's lawful control or possession.

This order is posted in accordance with 43 CFR 423.3(b). Violation of this prohibition or any prohibition listed in 43 CFR 423 is punishable by fine, or imprisonment for not more than 6 months, or both.

Dated: April 28, 2004.

Michael R. Finnegan,

Central California Area Office, Mid-Pacific Region.

[FR Doc. 04–10297 Filed 5–5–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: School Crime Supplement (SCS) to the National Crime Victimization Survey (NCVS).

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 6, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dr. Katrina Baum, National Crime Victimization Survey (NCVS), *baumk@ojp.usdoj.gov*, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

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) *The title of the form/collection:* School Crime Supplement to the National Crime Victimization Survey.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* SCS–1.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Eligible individuals 12 to 18 years of age in the United States. The School Crime Supplement to the National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the school environment, victimization at school, exposure to fighting and bullying, availability of drugs and alcohol in the school, and attitudes related to fear of crime in schools.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Approximately 12,200 persons 12 to 18 years of age will complete an interview. We estimate each interview will take 10 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 2,038 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 30, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–10299 Filed 5–5–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 21, 2004, a proposed Consent Decree in *United States* v. *The Glidden Company*, Civil Action No. 1:02CV2447, was lodged with the United States District Court for the Northern District of Ohio.

In this action the United States sought, under Section 107 of the Comprehensive Environmental

Response, Compensation, and Recovery Act ("CERCLA"), 42 U.S.C. 9607, to recover costs incurred by the United States in connection with the Ohio Drum Superfund Site in Cleveland, Ohio (the "Site"). The United States also sought a civil penalty and punitive damages for noncompliance with a unilateral administrative order ("UAO") issued by the United States Environmental Projection Agency ("U.S. EPA"), and a declaratory judgment of liability for future response costs incurred by the United States in connection with the Site.

Under the Consent Decree, The Glidden Company ("Glidden") would reimburse the United States for $343,000 of the approximately $502,316 in unreimbursed response costs incurred by U.S. EPA relating to the Site. If such payment is not received when due, the Consent Decree provides for a stipulated penalty in the amount of $500 per day. In addition, Glidden would covenant not to sue the United States: (a) With respect to Past Response Costs (as defined in the Consent Decree); (b) with respect to the UAO; or (c) with respect to the Consent Decree. In exchange, the United States would covenant not to sue Gliden: (a) Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover Past Response Costs; and (b) pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. 9606(b)(1), for its alleged failure to comply with the UAO, with certain reservations. In addition, Glidden would receive protection for contribution actions or claims pertaining to Past Response Costs, as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Glidden Company*, D.J. Ref. 90–11–2–1300/3.

The Consent Decree may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114–2600, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–10257 Filed 5–5–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–day notice of information collection under review: request for disposition of offense.

The Department of Justice (DOJ), Bureau of alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 6, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott Thomasson, Chief, Firearms Enforcement Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

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 the technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Request for Disposition of Offense.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5020.29. 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:* Individuals or households. *Other:* Business or other for-profit. The form is used if an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), ATF F 5020.29 is sent to the custodian of records to ascertain the disposition of the case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 25 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Office, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 3, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–10300 Filed 5–5–04; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 28, 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: Income and Eligibility Verification.

OMB Number: 1205–0238.

Frequency: Quarterly.

Affected public: State, local, or tribal government.

Respondents: 53.

Responses: 212.

Total Burden Hours: 27,766.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: The Secretary has interpreted applicable sections of Federal law to require States to identify claimants who are most likely to exhaust their UI benefits and to provide reemployment services to expedite their return to suitable work. The ETA 9048 report provides a count of the claimants who were referred to Worker Profiling and Reemployment Services (WPRS) and a count of those who completed the services. A second report provides the subsequent collection of wage records which is a useful management tool for monitoring the success of the WPRS program in the state.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–10268 Filed 5–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 28, 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: New collection.

Title: Employer, Customer and Employment Comparison Surveys.

OMB Number: 1205–0NEW.

Frequency: One-time.

Affected Public: Business or other for-profit; Individual or household.

Number of Respondents: 12,000.

Number of Annual Responses: 12,000.

Estimated Time Per Response: 10 to 20 minutes.

Burden Hours Total: 3,387.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Data will be collected from employers and other customers of one-stop centers about their use of self-directed services provided under the Workforce Investment and Wagner-Peyser Acts. The data will be used to estimate the effectiveness of self-directed services provided in a one-stop environment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–10269 Filed 5–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 28, 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: Occupational Noise Exposure (29 CFR 1910.95).

OMB Number: 1218–0048.

Frequency: On occasion.

Type of Response: Recordkeeping; reporting; and third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, local, or tribal government.

Number of Respondents: 379,512.

Number of Annual Responses: 25,082,463.

Estimated Time Per Response: Varies from 2 minutes to notify employees when noise exposure exceeds the 8-hour time-weighted average of 85 decibels to 16 hours for firms with 250 or more employees to conduct area monitoring.

Total Burden Hours: 5,175,645.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $98,814,861.

Description: The information collection requirements specified in 29 CFR 1910.95 (the Noise Standard) protect employees from suffering material hearing impairment. The information collection requirements of the Noise Standard include conducting noise monitoring; notifying employees when they are exposed at or above an 8-hour time-weighted average of 85 decibels; providing employees with initial and annual audiograms; notifying employees of a loss in hearing based on comparing audiograms; training employees on the effects of noise exposure and employee audiometric examinations, maintaining records of workplace noise exposure and employee audiograms; and allowing employees and OSHA to access to materials and records required by the Standard.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Construction Fall Protection Plans and Training Requirements (29 CFR 1926.502 and 1926.503).

OMB Number: 1218–0197.

Frequency: On occasion.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit; Federal Government; and State, local, or tribal government.

Number of Respondents: 250,000.

Number of Annual Responses: 8,304,931.

Estimated Time Per Response: Varies from 5 minutes for a qualified person to certify safety nets and safety-net installations to 1 hour to develop a fall protection plan.

Total Burden Hours: 894,394.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1926.502 and 1926.503 allow employers to develop alternative procedures to the use of conventional fall protection systems when the systems are infeasible or create a greater hazard. The alternative procedures (plan) must be written. Also, employers who use safety net systems may certify that the installation meets the standard's criteria in lieu of performing a drop-test on the net. In addition, employers are required to prepare training certification records for their employees. The plan and certification records ensure that employers comply with the requirements to protect workers from falls, which account for the largest number of fatalities among construction workers.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Derricks (29 CFR 1910.181).

OMB Number: 1218–0222.

Frequency: On occasion; semi-annually; monthly; 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: 10,000.

Number of Annual Responses: 115,140.

Estimated Time Per Response: Varies from 1 minute to maintain rated load charts to 10 minutes to inspect rope on derricks.

Total Burden Hours: 25,104.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.181 specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to prevent death and serious injuries among employees by ensuring that the derrick is not used to lift loads beyond its rated capacity and that all the ropes are inspected for wear and tear.

Paragraph (c)(1) requires that for permanently installed derricks a clearly legible rating chart be provided with each derrick and securely affixed to the derrick. Paragraph (c)(2) requires that for non-permanent installations, the manufacturer provide sufficient information from which capacity charts can be prepared by the employer for the particular installation. The capacity charts must be located at the derrick or at the jobsite office. The data on the capacity charts provide information to the employees to assure the derricks are used as designed and not overloaded or used beyond the range specified in the charts.

Paragraph (g)(1) requires employers to thoroughly inspect all running rope in use, and do so at least once a month. In addition, before using rope which has been idle for at least a month, it must be inspected as prescribed by paragraph (g)(3) and a record prepared to certify that the inspection was done.

The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for

inspection. The certification records provide employers, employees, and OSHA compliance officers with assurance that the ropes are in good condition.

Paragraphs (c) and (g) require the disclosure of charts and inspection certification records if requested during an OSHA inspection.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–10270 Filed 5–5–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 23, 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 Employee Benefits Security Administration (EBSA), 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: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Prohibited Transaction Class Exemption 92–6: Sale of Individual Life Insurance or Annuity Contracts by a Plan.

OMB Number: 1210–0063.

Frequency: On occasion.

Type of Response: Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 8,360.

Number of Annual Responses: 8,360.

Estimated Time Per Response: 12 minutes.

Total Burden Hours: 1,671.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $3,093.

Description: Prohibited Transaction Class Exemption 92–6 exempts from the prohibited transaction restrictions of the Employee Retirement Security Act of 1974 (ERISA) the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, other employee benefit plans, owner-employees or shareholder-employees. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of ERISA.

The disclosure requirements protect plan participants by putting them on notice of the plan's intention to sell insurance or annuity contracts under which they are insured, and by giving the participants the right of first refusal to purchase such contracts.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Prohibited Transaction Class Exemption 91–55: Transactions between Individual Retirement Accounts and Authorized Purchases of American Eagle Coins.

OMB Number: 1210–0079.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 2.

Number of Annual Responses: 12,800.

Estimated Time Per Response: 1 minute for recordkeeping and 16 minutes to compose and distribute the disclosure document.

Total Burden Hours: 554.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Exemption 91–55 permits purchases and sales by certain "individual retirement accounts," as defined in Internal Revenue Code section 408 (IRAs) of American Eagle bullion coins ("Coins") in principal transactions from or to broker-dealers in Coins that are "authorized purchasers" of Coins in bulk quantities from the United States Mint and which are also "disqualified persons," within the meaning of Code section 4975(e)(2), with respect to IRAs. The exemption also describes the circumstances under which an interest-free extension of credit in connection with such sales and purchases is permitted. In the absence of an exemption, such purchases and sales and extensions of credit would be impermissible under the Employee Retirement Income Security Act of 1974 (ERISA).

The information collection request for this exemption includes three requirements. First, certain information related to covered transactions in Coins must be disclosed by the authorized purchaser to persons who direct the transaction for the IRA. Currently, it is standard industry practice that most of this information is provided to persons directing investments in an IRA when transactions in Coins occur. The exemption also requires that the disqualified person maintain for a period of at least six years such records as are necessary to allow accredited persons, as defined in the exemption, to determine whether the conditions of the transaction have been met. Finally, an authorized purchaser must provide a confirmation statement with respect to each covered transaction to the person who directs the transaction for the IRA.

The recordkeeping requirement facilitates the Department's ability to make findings under section 408 of ERISA and section 4975(c) of the Code. The confirmation and disclosure requirements protect a participant or beneficiary who invests in IRAs and transacts in Coins with authorized purchasers by providing the investor or the person directing his or her investments with timely information about the market in Coins and about the individual's account in particular.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Prohibited Transaction Class Exemption 85–68 to Permit Employee Benefit Plans to Invest in Customer Notes of Employers.

OMB Number: 1210–0094.

Frequency: On occasion.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 69.

Number of Annual Responses: 325.

Estimated Time Per Response: 1 hour.

Total Burden Hours: 1.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Pursuant to section 408 of ERISA, the Department has authority to grant an exemption from the prohibitions of sections 406 and 407(a) if it can determine that the exemption is administratively feasible, in the interest of participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan.

Prohibited

Transaction Class Exemption 85–68 describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. Specifically, the exemption requires that the employer provide a written guarantee to repurchase a note which becomes more than 60 days delinquent, that such notes be secured by a perfected security interest in the property financed by the note, and that the collateral be insured. This ICR requires that records pertaining to the transaction be maintained for a period of six years for the purpose of ensuring that the transactions are protective of the rights of participants and beneficiaries.

The Department believes that the applicable financial records would normally be maintained for purposes satisfying the requirement of the annual financial report (Form 5500) that is approved under OMB control number 1210–0110; therefore, only 1 burden hour is requested for this OMB control number.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–10271 Filed 5–5–04; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic; and Combating Exploitive Child Labor Through Education in Southern Africa (Botswana, Lesotho, Namibia, South Africa, and Swaziland)

May 6, 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 04–06.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: Not applicable.

KEY DATES: Deadline for Submission of Application is June 7, 2004.

EXECUTIVE SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $14.5 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 Central America and the Dominican Republic (up to $5.5 million) and Southern Africa (up to $9 million). The activities funded will complement and expand upon existing projects and programs to improve basic education in these countries, and, where applicable, provide access to basic education to children in areas of high incidence of exploitive child labor. Applications must be regional in approach and respond to the entire Statement of Work outlined in this Solicitation for Cooperative Agreement Applications. In Central America and the Dominican Republic, activities under this cooperative agreement will strengthen government and civil society's capacity to address the education needs of working children and those at risk of entering work. In Southern Africa, activities under this cooperative agreement will expand access and quality of basic education for working children and those at risk of entering work, particularly HIV/AIDS affected children.

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 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 Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic, and Southern Africa (Botswana, Lesotho, Namibia, South Africa, and Swaziland). ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2003, Pub.L. No 108–7, 117 Stat. 11 (2003). 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

i. 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. Full-time child workers are generally unable to attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, the U.S. Department of Labor 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 the worst forms of child labor as defined by ILO Convention 182. 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 enhanced future employability of children around the world by increasing access to basic education for working children and those at risk of entering work. Exploitive child labor elimination 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.

ii. Barriers to Education for Working Children, Country Background, 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 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 of high exploitive child labor, they manifest themselves in specific ways in each region/country of interest in this solicitation. In their response to the solicitation, applications must be regional in approach, *i.e.*, applications must include all of the countries in the proposed region (either Central America and the Dominican Republic or Southern Africa), 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. In Central America and the Dominican Republic, this project will predominantly support policy mechanisms and build capacity to undertake educational reforms that enable working children to benefit from education programs. If an applicant proposes direct education service delivery to individual children in Central American and the Dominican Republic, all such interventions must be designed as demonstration projects with direct policy applications. In cases where direct education service delivery to individual children will be provided, applicants must demonstrate that the interventions are needed and support policy gaps.

In Central America and the Dominican Republic, activities under this cooperative agreement will strengthen government and civil society's capacity to address the education needs of working children and those at risk of entering work. In Southern Africa, activities under this cooperative agreement will expand access and quality of basic education for working children and those at risk of entering work, particularly as a consequence of the HIV/AIDS pandemic. Applicants should be able to identify the specific barriers to education and the education needs of specific children targeted in their project (*e.g.*, children withdrawn from work, children at high risk of dropping out 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 them. Short 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 2002 Findings on the Worst Forms of Child Labor* available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2002/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*.

Barriers to Education for Working Children in Central America and the Dominican Republic, and Focus of This Solicitation for the Region

In 2000, the ILO's International Program on the Elimination of Child Labor (IPEC) estimated that 17.4 million children ages 5 to 14 were working throughout Latin America and the Caribbean: Recent estimates indicate that more than 2.3 million children ages 5 to 17 in Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic are economically active. Most of these children work in rural areas in agriculture, on small family plots as well as on coffee, melon, and other commercial farms. The remainder of these children work in the region's cities and urban areas. Children work in small businesses and industries, sell goods on the street, and wash cars. Some children engage in particularly hazardous activities such as prostitution and pornography. On average, about half of working children do not attend school. The remainder combine school and work, often coming to school without 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, and therefore perpetuate the cycle of poverty.

In response to this dire situation, the governments and civil society of Central America and the Dominican Republic, with assistance from international organizations and other partners, have taken steps to reduce exploitive child labor and encourage school attendance. Every country in the region has ratified ILO Convention 138 on the Minimum Age for Employment and ILO Convention 182 on the Worst Forms of Child Labor. Each country is also a member of ILO/IPEC, and has established national committees of governmental and non-governmental representatives that have developed plans of action to address exploitive child labor. A number of projects supported by ILO/IPEC, UNICEF, and a host of other international organizations have been implemented that aim to remove children from exploitive child labor and enroll them in school. USDOL has funded a number of such efforts, which include country, sector, and regional projects to remove children from work, build capacity to combat exploitive child labor, raise awareness, strengthen legislation against exploitive child labor, and gather information about the problem.

In addition, a number 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, and the U. S. Agency for International Development (USAID), have instituted programs to promote primary education. Although USAID's 2004–2008 plan for Central America does not specifically mention exploitive child labor, there is a role assigned to the creation of "healthier, better-educated people" through increased and improved basic education opportunities.

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:

Lack of coordination of efforts to combat exploitive child labor with efforts to promote basic education. In many instances, links have not been made between the institutions and actors concerned with exploitive child labor and those concerned with education. Cross-agency communication is weak.

Ministries of Education often do not see exploitive child labor as an education issue. As a result of the lack of linkages mentioned above, most of the education ministries in the region have not integrated the issue of exploitive child labor into their education policies and programs, nor is the education of working children necessarily considered in the development of Education for All (EFA) or education fast-track strategies. Nonetheless, there are some examples in the region of ways in which ministries of education have become involved in the struggle against exploitive child labor. In Costa Rica, for example, a child labor office was recently established within the Ministry of Public Education.

Lack of community awareness of the dangers inherent in exploitive child labor. In many cases, communities in Central America and the Dominican Republic hold the belief that child work is formative and builds character, and are not aware of the fact that when work interferes with basic education, it tends to perpetuate, rather than alleviate, poverty. Community support for education has led to successful locally-managed education programs in several areas of El Salvador, Guatemala, and Honduras. Although the community managed school programs implemented in these countries may not be appropriate in all environments, they offer lessons about the importance of local interest in education.

Lack of information sharing on exploitive child labor and education. Despite significant advances in the quality of data on exploitive child labor and basic education in the region, there is only limited diffusion of the information and little capacity to interpret and effectively use the data.

Lack of collaboration between government and civil society. In cases where civil society has taken up the banner of exploitive child labor and/or universal education, there has been a lack of coordinated or joint efforts, not only within each country, but also throughout the region.

Lack of school attendance monitoring. At a very basic level, the systems to track whether children are attending school in most parts of Central America and the Dominican Republic are either weak or nonexistent. In other areas of the world, such tracking and related enforcement of compulsory attendance laws have created an important incentive for parents to send their children to school.

Lack of teacher training on exploitive child labor and on how to teach working children. In the Dominican Republic and the Central American countries, teachers lack the training and support needed to understand the issue of exploitive child labor and are unprepared for the challenges of teaching children who combine school and work or who have special educational needs.

Inadequate incentives for teachers and for rewarding good teacher performance. In the Dominican Republic and Central America, teacher strikes are frequently due, in large part, to low salaries and there is a lack of incentives to encourage high quality teacher performance.

Disagreement on Education Policy. To a greater extent in Guatemala, Honduras, and Nicaragua, and a lesser extent in Costa Rica, El Salvador, and the Dominican Republic, education reform has become an extremely contentious issue. While many agree that access to quality education in the region must be improved, teachers unions, businesses, communities, and governments are divided over the best method to achieve this goal.

Due to the number of existing efforts in Central America and the Dominican Republic, and the need to promote sustainability, applicants are encouraged to predominantly support policy mechanisms and build capacity to undertake educational reforms that enable working children to benefit from education programs. If an applicant proposes direct education service delivery to individual children in Central American and the Dominican Republic, all such interventions must be designed as demonstration projects with direct policy applications. In cases where direct education service delivery to individual children will be provided, applicants must demonstrate that the interventions are needed and support policy gaps. The Child Labor Education Initiative awarded under this cooperative agreement should complement existing approaches by focusing on ways to: (1) Enhance the viability of schooling as an alternative to hazardous and exploitive child labor; (2) mobilize stakeholders to participate in this activity; and (3) build the capacity of future national experts who will contribute directly to government policies through their commitment and expertise in using school interventions to reduce hazardous and exploitive child labor.

Applications in response to this solicitation are encouraged to:

a. Promote innovative approaches to address barriers in the specific countries and the sharing of good practices and lessons learned on exploitive child labor and education within the Dominican Republic and Central American region.

b. Encourage intra-governmental collaboration, among relevant agencies within each country, that will promote the goals of this project.

c. Support the institutionalization of efforts and reforms that might lead to improved incorporation of working children into educational settings, by creating and mobilizing stakeholders (at the local and national level) and by developing the capability to manage interventions using local resources and networks.

d. Support innovative, cross-sectoral and international strategies that will meet the needs for institutional development and for the mobilization of stakeholders.

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. Promote the types of alliances that might sustain the advocacy of education for the elimination of exploitive child labor.

g. Consider other relevant international and regional movements (such as Education For All; Commissions on the Rights of the Child; and PREAL), and relate initiatives under

this solicitation to those movements that would promote the goals of this project.

h. Stimulate increased accountability and creative incentives for schools to incorporate children who are at-risk of entering abusive labor.

i. Promote, in collaboration with the national Ministries of Labor and Education and businesses, School-Business Partnerships and School-to-Work programs in which businesses collaborate with secondary schools by training students in occupational skills.

j. Promote awareness raising of core labor standards and restrictions on exploitive child labor among teachers, through in-service training.

In addition, applicants are strongly encouraged to collaborate with and complement existing projects, particularly those funded by USDOL, including Timebound and other projects implemented by ILO/IPEC, to the extent those projects further the goals of this project. However, applicants should not duplicate the activities of existing efforts and/or projects and should work within host government child labor frameworks. Country specific information is provided in Appendix B.

Note to All Applicants: The existence of approximately U.S. $10 million in USDOL-funded child labor projects in both El Salvador and the Dominican Republic, as well as a number of other donor sponsored efforts, creates a unique environment for the implementation of the proposed project under this cooperative agreement in El Salvador and the Dominican Republic. Any new initiative under this cooperative agreement should consider how best to complement, rather than duplicate, current projects in these countries so that the goals of this project are accomplished. Applicants are strongly encouraged to consider the number of efforts and amount of resources already in existence in El Salvador and the Dominican Republic when making resource allocations for the region. In El Salvador, applicants are also strongly encouraged to coordinate actions with the existing ILO/IPEC Timebound Program. In the case of the Dominican Republic, applicants should include the Dominican Republic in proposed regional activities and should collaborate closely with DevTech Systems and ILO/IPEC's Timebound Program efforts.

Barriers to Education for Working Children in Southern Africa (Botswana, Lesotho, Namibia, South Africa and Swaziland), and Focus of This Solicitation for the Region

Exploitive child labor in Southern Africa occurs frequently in the informal sector. Children work in commercial and subsistence agriculture in rural areas, and increasing numbers of orphans and vulnerable children work on the streets of major cities and towns. These children engage in begging, vending, washing cars, carrying goods, and prostitution. Young girls are often employed in domestic service, while boys are often found herding animals in rural and remote areas, which is often perceived as a traditional rite of passage for male youth in some of the countries. Many children work to help their families. However, children are often found working for long hours per day, which limits their ability to attend school, as well as their academic performance.

It is important to highlight that information on the nature and extent of exploitive child labor and the barriers to education in the Southern African countries is limited. All of the governments in the region have ratified ILO Conventions 138 and 182, but each is at a different stage of implementing the commitments made under the Conventions. An ILO/IPEC regional child labor project was recently funded by the USDOL and is being implemented in Botswana, Lesotho, Namibia, South Africa, and Swaziland. This ILO/IPEC project aims to improve the knowledge base of the worst forms of child labor and will pilot small direct action activities in Botswana, Lesotho, Namibia, and Swaziland. Activities under this solicitation should complement, and where possible, collaborate with those of the regional ILO/IPEC project.

As a whole, these countries dedicate a significant portion of their national budgets to education, ranging from 20 to 30 percent. All of the Southern African countries of interest under this solicitation, except for South Africa and Swaziland, offer free primary education; and, as a result, enrollment rates are relatively high. Many children who are enrolled in education also work, however, which leads to poorer retention and completion rates. There have been more attempts in the last few years to provide vocational education and skills training for older children, as well as those that have not received formal education. Nevertheless, given the magnitude of the need for these alternatives in Southern Africa, these programs have not been able to meet the demand, leaving some children without any educational opportunities.

Rural and "farm" schools continue to have inadequate resources and untrained or under-trained teachers. Access to these schools is also a major problem due to their location and the long distances that children must travel to reach them. Although education is free in most of the countries of Southern Africa, the costs associated with education, such as materials, school contributions, uniforms, and transportation and/or boarding restrict school-enrollment and attendance. Given that many of these working children are already living in abject poverty, some cannot afford these fees and drop out or never enroll in school, ending up working with their parents or on the streets in an attempt to earn a living.

Moreover, the effects that the HIV/AIDS pandemic is having on Southern Africa, and its children, cannot be overlooked. HIV/AIDS exacerbates the problem of exploitive child labor throughout the region. Estimates put the HIV/AIDS rate in the region as high as 25 to 35 percent of the population aged 15–49. The pandemic is causing businesses to lose their most productive workers, children to lose their parents and caregivers, and schools to lose their teachers, while putting an enormous strain on the governments' resources to provide social services and education for their populations. Increasing numbers of children, affected by the HIV/AIDS pandemic, drop out of school to survive on their own and/or to provide for their sick relatives. Some estimates put the number of children orphaned by HIV/AIDS in the region at 500,000 to over one million. Projections from various governments and relief organizations are grim and state that the number of HIV/AIDS orphans in these countries may double by 2010.

Despite attempts to address the educational challenges that working children face, there are still critical gaps/needs that must be addressed. Applications in response to this solicitation are encouraged to address the following issues:

Limited public awareness and research concerning children's participation in exploitive labor (especially the worst forms).

Inadequate educational opportunities (including formal, vocational, and non-formal education) and social services (counseling and child protection) for children heading households, and orphans and vulnerable children living and/or working on the streets in towns and cities.

Insufficient access to quality formal, non-formal, and vocational education (long distances and few schools) and poor infrastructure, teacher quality, and basic resources in rural and farm schools.

Poor capacity of, and coordination between, government ministries, and

inadequate policies and structures that support the implementation of child labor laws.

Inadequate opportunities for quality formal, non-formal, and vocational education for teenage mothers or pregnant girls, indigenous populations, and older children with little or no education.

Country specific information is provided in Appendix B.

The project funded by this solicitation should contribute to efforts already underway to prevent and eliminate hazardous child labor in Southern Africa, particularly for HIV/AIDS affected children, by addressing specific barriers to education. Applications in response to this solicitation are encouraged to promote the sharing of good practices and lessons learned on exploitive child labor and education within the Southern Africa region. In addition, applicants are strongly encouraged to collaborate with and complement existing projects, particularly those funded by USDOL, including Timebound and other projects implemented by ILO/IPEC. However, applicants should not duplicate the activities of existing efforts and/or projects and should work within host government child labor frameworks.

Note to All Applicants: The Government of South Africa has pro-actively responded to the problem of exploitive child labor with the development of the CLAP. The CLAP focuses on coordinating governmental, departmental, and provincial responses relating to children and exploitive child labor and outlines actions (including education interventions) that need to be taken to ensure that children are withdrawn from and prevented from entering exploitive labor. The ILO/IPEC "Supporting the Timebound Program to Eliminate the Worst Forms of Child Labor in South Africa's Child Labor Action Program," recently funded by USDOL, will work within the Government of South Africa's CLAP framework. The project(s) funded under this solicitation should focus its efforts on education-related interventions that have been identified in the CLAP Framework, and, where possible, those under the ILO/IPEC Timebound Program. Close coordination and communication with the government should be maintained throughout the project period.

B. Statement of Work

Taking into account the challenges to educating working children in each region of interest, the applicant will facilitate, and implement, as appropriate, creative and innovative approaches to promote policies that will enhance the provision of educational opportunities to children engaged in or removed from exploitive child labor, particularly the worst forms. The expected outcomes/results of the project are, through improved policies and direct education service delivery, as applicable, to: (1) Increase educational opportunities and access (enrollment) for children who are engaged in, at risk of, and/or removed from exploitive child labor, particularly its worst forms; (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) (i). Because of the limited available resources under this award, applicants should implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve expanded numbers of children and communities. However, applicants should not duplicate the activities of 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 regional and national stakeholders in developing project interventions. In Central America and the Dominican Republic, due to the number of existing efforts in the region and the need to promote sustainability, applicants are encouraged to support policy mechanisms and educational reforms that enable working children to benefit from education programs, rather than the provision of direct education service delivery. In Southern Africa, applicants should consider the economic and social contexts of each country when formulating project strategies and that approaches applicable in one country may not be relevant to others.

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. If the application does not propose interventions aimed toward the target group and geographical areas as identified (where applicable), then the application may be considered unresponsive. Applicants whose strategies include the provision of 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. This response will be the foundation for the final project document that will be approved after award of the cooperative agreement.

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 should 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 a project awarded under this cooperative agreement.

II. Award Information

Type of assistance instrument: cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI. 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 no later than September 30, 2004. Up to U.S. $14.5 million will be awarded under this solicitation, with up to $5.5 million for Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic, and up to $9 million for Southern Africa

(Botswana, Lesotho, Namibia, South Africa and Swaziland). 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. Any subcontractor must be approved by USDOL.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based or community-based organizations, 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. (All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083), which is available online at *http://www.dol.gov/ILAB/grants/sga0406/bkgrdSGA0406.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.

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, as amended by 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. Applicants applying for more than one region must submit a separate application for each region. If applications for the two regions are combined, they will not be considered.

2. Cost Sharing or Matching

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources and in-kind contributions is strongly encouraged.

3. 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 already implementing Child Labor Education Initiative projects or activities for USDOL will be taken into account. 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 will not be penalized.

IV. Application and Submission Information

1. 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, and in the **Federal Register**, 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.*

2. 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 04–06, Washington, DC 20210, not later than 4:45 p.m. Eastern Time, June 7, 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 that two (2) pages. These pages are also *not* included in the 45-page limit for Part II.

Part I of the application 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/sga0406/bkgrdSGA0406.htm.* Copies of these forms are also available online from the GSA Web site at *http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1B8F985256A72004C58C2/$file/sf424.pdf* and *http://contacts.gsa.gov/webforms.nsf/0/5AEB1FA6FB3B832385256A72004C8E77/$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 must provide 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 (B) of this solicitation) and address each of the Application Review Criteria found in Section V (1).

The Part II technical application must not exceed 45 single-sided (8½″ x 11″), double-spaced, 10 to 12 pitch typed pages for each region, and must include responses to the application evaluation criteria outlined in this solicitation. Part II must include a project document submitted in the format shown in Appendix A. The application should 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.

3. Submission Dates and Times

Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: Solicitation 04–06, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile

(FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., 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 Procurement Services Center after 4:45 p.m. Eastern Time, June 7, 2004, will not be considered unless it is received before the award is made and:

A. It is determined by the Government that the late receipt was due solely to mishandling by Government after receipt at USDOL at the address indicated;

B. It was sent by registered or certified mail not later than the fifth calendar day before 30 days from the date of publication in the **Federal Register**; or

C. 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 June 7, 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.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; however the applicant bears the responsibility for timely submission. It is recommended that you confirm receipt of your application with your delivery service. Confirmation of receipt can be made with 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.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

5. Funding Restrictions

A. In addition to those specified under OMB Circular A–122, the following costs are also unallowable:

i. Construction with funds under this cooperative agreement should not exceed 10% 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 when proposing construction activities in order to ensure sustainability.

ii. 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 or revolving funds.

iii. Awards will not allow reimbursement of pre-award costs.

B. The following activities are also unallowable under this solicitation:

i. Under this cooperative agreement, awareness raising and advocacy cannot include lobbying or fund-raising (see OMB Circular A–122).

ii. 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-awardees, 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-awardees, 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-awardees meet these criteria.

6. Other Submission Requirements

The closing date for receipt of applications is June 7, 2004. As discussed above, applications must be received by 4:45 p.m. (Eastern Time) at the address identified in Section IV (3) above. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be accepted. Telegram, facsimile (FAX), and e-mail applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov*.

V. Application Review Information

1. Application Evaluation Criteria

Technical panels will review applications written in the specified format (see Section I, Section IV (2) 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 below. 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

A. Project/Program Design/Budget-Cost Effectiveness (45 Points)

This part of the application constitutes the preliminary project document described in Section I (B) and outlined in Appendix A. The applicant's proposal should describe in detail the proposed approach to comply with each requirement.

This component of the application should 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 implementing environment in the selected region. When preparing the project document outline, the applicant should at minimum include a description of:

i. *Children Targeted*—The applicant will identify which and how many children will 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.

ii. *Needs/Gaps/Barriers*—The applicant will describe the specific gaps/educational needs of the children targeted that the project will address.

iii. *Proposed Strategy*—The applicant will discuss the proposed regional strategy to address gaps/needs/barriers of the children targeted and its rationale.

iv. *Description of Activities*—The applicant will 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. Ideally, the proposed approach should build upon existing activities, government policies, and plans, and avoid needless duplication.

v. *Work Plan*—The applicant will 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.

vi. *Program Management and Performance Assessment*—The applicant will 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 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. For more information on the Child Labor Education Initiative's common indicators, please visit *http://www.clear-measure.com.*

vii. *Budget/Cost Effectiveness*—The applicant will show how the budget reflects program goals and design in a cost-effective way so as to reflect budget/performance integration. The budget should be linked to the activities and outputs of the implementation plan listed above. This section of the application should 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 should allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities. When developing their applications, applicants should allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct costs. Preference may be given to applicants with 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.

B. 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:

i. *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.

ii. *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, 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.

iii. *Fiscal Oversight*—The organization shows evidence of a sound financial system. The results of the most current independent financial audit must accompany the application, and applicants without one will not be considered.

iv. *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 agreement.

v. *Experience*—The application must include information about previous grant, cooperative agreements, or

contracts of the applicant that are relevant to this solicitation including:

a. The organizations for which the work was done;

b. A contact person in that organization with their current phone number;

c. The dollar value of the grant, contract, or cooperative agreement for the project;

d. The time frame and professional effort involved in the project;

e. A brief summary of the work performed; and

f. A brief summary of accomplishments.

This information on previous grants, cooperative agreements, and contracts held by the applicant shall be provided in appendices and will not count in the maximum page requirement.

Note to All Applicants: Past performance of organizations already implementing Child Labor Education Initiative projects or activities for USDOL will be taken into account in judging organizational capacity. 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 will not be penalized.

C. 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. Information provided on the experience and educational background of personnel should include the following:

- 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.
- The educational background and experience of all staff to be assigned to the project.
- The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.
- 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 should be clearly delineated to ensure responsiveness to the needs of USDOL.

Note to All Applicants: USDOL strongly recommends that key personnel allocate at least 50% 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 part of the application.

In this section, the following information must be furnished:

i. *Key personnel*—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.

a. A *Project Director* to oversee the project and be responsible for implementation of the requirements of the cooperative agreement. The Program 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 will 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 will 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 preferred, as is a similar knowledge of official language(s) spoken in the target region/countries.

c. A *Monitoring and Evaluation Officer* who will 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 domains will be given special consideration.

ii. *Other Personnel*—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation.

iii. *Management Plan*—The management plan must include the following:

a. A description of the functional relationship between elements of the project's management structure; and

b. The responsibilities of project staff and management and the lines of authority between project staff and other elements of the project.

iv. *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.

v. *Roles and Responsibilities*—The applicant must include a resume and description of the roles and responsibilities of all personnel proposed. Resumes must be attached in an appendix. 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.

D. 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 or income generation projects for adults that 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.

2. 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: 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.

3. 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

1. 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 designation. 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.

2. Administrative and National Policy Requirements

A. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. If during project implementation, a Grantee is found in violation of U.S. government regulations, 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. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles. Grantees will also be required to 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:

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.

29 CFR Part 32—Nondiscrimination on the Basis of Handicap In Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap In Programs or Activities Conducted by the Department of Labor.

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

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.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

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.

B. 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 granted after the cooperative agreement is signed must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL/ILAB.

C. Key Personnel

The applicant shall 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 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.

D. 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 shall involve only specified commitments for which a need existed during the cooperative agreement period and which 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 shall be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

All equipment purchased with project funds should be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantees will determine how to best allocate equipment purchased with project funds in order to ensure sustainability of efforts in the projects' implementing areas.

E. Site Visits

USDOL, through its authorized representatives, has the right, at all 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 shall provide and shall 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 shall be performed in a manner that will not unduly delay the implementation of the project.

3. Reporting and Deliverables

In addition to meeting the above requirements, a Grantee will be 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 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 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 performance will also be developed by a Grantee and approved by USDOL. Unless otherwise indicated, a Grantee must submit copies of all required reports to ILAB by the specified due dates. Specific deliverables are the following:

A. Project Design Document

Applicants will prepare a preliminary project 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/sga0406/bkgrdSGA0406.htm.).* The project document will include a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable and project budget. The narrative will address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section below.

Within six months after the time of the award, the Grantee will 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 will also include sections that address coordination strategies, project management and sustainability.

B. 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 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 PSC 272 should be submitted to ILAB upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

C. Annual Work Plan

An annual work plan will be developed within six months of project award and approved by ILAB so as to ensure coordination with other relevant social actors throughout the region.

Subsequent annual work plans will be delivered no later than one year after the previous one.

D. Performance Monitoring and Evaluation Plan

A performance monitoring and evaluation plan will be developed, in collaboration with USDOL/ILAB, including beginning and ending dates for the project, 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 will be developed in conjunction with the logical framework project design and common indicators for GPRA reporting selected by ILAB. The plan will include a limited number of key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection will be tied to the indicators of the project design document and the performance monitoring plan. A monitoring and evaluation plan will be submitted to ILAB within six months of project award.

E. Project Evaluations

Grantees and the GOTR will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external and independent in nature. A Grantee must respond in writing to any comments and recommendations resulting from the review of the mid-term report. The budget must include the projected cost of mid-term and final evaluations. *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 Child Labor Education Initiative common indicators.

Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs.

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

Production of Deliverables

1. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL/ILAB, for approval, all media-related, awareness-raising, and educational materials developed by it 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.

2. 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:

A. 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.

B. 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." In addition, 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. USDOL is not obligated to make any awards as 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 do not waive any cooperative agreement requirements and/or procedures.

Signed at Washington, DC, this 30th day of April, 2004.

Lisa Harvey,

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)
   - 3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework)
   - 3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration)
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 the DOL
   - 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: Out-Put Based Budget Example

(A worked example of a Logical Framework matrix, an Out-put Based Budget, and other background documentation for this solicitation are available from the USDOL/ILAB Web site at *http://www.dol.gov/ILAB/grants/sga0406/bkgrdSGA0406.htm.*)

Appendix B: Country Background Section

Central America and the Dominican Republic

Costa Rica

In 2002, the Costa Rican Multiple Purpose Household Survey reported that 11.4 percent of children ages 5 to 17, or 127,077 children, were working. Children in Costa Rica work

in agriculture, both on small family farms as well as in commercial coffee and sugarcane, construction, carpentry, a variety of service occupations, and street vending. Children are also engaged in prostitution and pornography, sometimes as a result of the sex tourism industry. Many of the children working in commercial agriculture in Costa Rica are native Nicaraguans. Despite Costa Rica's relatively high enrollment rates, 44 percent of working children leave the education system, while the remainder combines school and work.

Barriers to education for working children still exist in Costa Rica. Because education for working children is a complex issue, it requires new levels of collaboration across government agencies. Although Costa Rica has a long history of well-established government institutions, agencies are still faced with the challenge of coordinating their actions on exploitive child labor. There is a tendency to fit the problem of exploitive child labor and education to the budget and mandate of an agency, rather than to develop strategies to link the energy and efforts of the various agencies in order to better confront the problem. There is also a need to move beyond localized, fragmented agreements in order to develop broader collaborative policies to promote working children's access to education.

In addition to a lack of interagency cooperation, there is also a lack of government to civil society collaboration on issues of education and exploitive child labor. The country's education system is extremely centralized, and there are few examples of community involvement in schooling. There is a need to engage parents, communities, and NGOs more openly in the education system. By involving the community in the process of education, awareness about the importance of schooling instead of exploitive child labor can be nurtured. Although some private sector organizations have become involved in the issue, for the most part, businesses and labor unions in Costa Rica have not been involved in the promotion of schooling for working children. NGOs in Costa Rica that have been very involved in issue of exploitive child labor have not yet had the opportunity to share their experiences and knowledge with the government.

El Salvador

In 2001, the Government of El Salvador's Multiple Purpose Household Survey reported that 11.5 percent of children ages 5 to 17 (222,479 children) in El Salvador were working. Most working children live in rural areas and work in agriculture, while others work in activities such as fishing, fireworks production, garbage scavenging, and street vending, drug trafficking, and commercial sexual exploitation. Approximately 35 percent of children who work in agriculture and related activities do not attend school, while 27 percent who work in services and 24 percent who work in manufacturing remain outside of the education system.

Despite the number of efforts in the country to date, there remain a number of barriers to education for working children. Despite a growing national consciousness to address the issue of education for working children, there is still a need for public policies that address the special challenges that working children face when attempting to access basic education. In addition, government agencies need to further develop their capacity to address these issues. Among the challenges is the area of information gathering on exploitive child labor and education, given limited resources to continually conduct statistical surveys. There is also little knowledge about the problem of exploitive child labor in the informal sector, and in such specific activities as domestic service. Furthermore, there is no system for monitoring a child's attendance in school. Finally, there is a lack of collaboration among government agencies, and between government and civil society, on the issue of education for working children. Although various groups exist in the country that are dedicated to promoting education for working children, there is a need for more inclusive efforts on the issue.

Guatemala

In 2000, the Government of Guatemala's National Living Conditions Survey (ENCOVI) reported that 23.6 percent of children ages 5 to 17 years (approximately 947,000 children) in Guatemala were economically active. Children are engaged in work on family farms and in the harvesting of commercial crops such as coffee, sugarcane, and broccoli. Children also work in stone quarries, as vendors on city streets, and, in some cases, become victims of commercial sexual exploitation and trafficking. Approximately half of the working children in the country did not attend school. For those that attend school, many complete much fewer years of instruction than non-working children; working children tend to complete only 1.8 years of schooling, roughly half the average years completed by non-working children.

Working children in Guatemala still face very significant obstacles in accessing basic education. No public/government programs that promote basic education address the special challenges faced by working children. Further, while MINEDUC has collaborated with ILO/IPEC projects at a local level, programs such as PRONADE have not been involved in exploitive child labor issues at the national level. In addition, although traditionally Guatemala had the benefit of school "supervisores" to conduct some monitoring of children's school attendance, reforms meant to decentralize the education system changed their roles, and have had the unintended effect of removing one of the few monitoring mechanisms for school attendance. Teachers in Guatemala are not afforded sufficient training on exploitive child labor and lack incentives for high performance. Accordingly, these teachers have little motivation to be supportive of working children in their classrooms. Finally, although there have been important efforts in Guatemala to engage communities on the issue of education, there have been very few efforts to involve civil society in dialogue on exploitive child labor, and how it relates to education.

Honduras

In 2002, the Government of Honduras' Multiple-Purpose Household Survey reported that 15.4 percent of children ages 5 to 17 years (approximately 356,000 children) in Honduras were working. Children work in sectors such as agriculture, fishing, manufacturing, construction, commerce, domestic service, and mining. Some children are engaged in commercial sexual exploitation and drug trafficking. Of working children, almost 60 percent did not attend school. Among working children who have some education, only an estimated 34 percent complete primary school.

Access to education for working children or children at risk of working is very limited, and resources are not always allocated to the schools or districts where they are most needed. The Ministry of Education has limited information management capabilities, and student attendance in school is reportedly tracked only at the individual school level. Because of this lack of information, planners within the Ministry do not have the data necessary to formulate strategies to promote attendance in particular regions or schools. Furthermore, teacher training is reported to be of low quality, and few teachers are trained on exploitive child labor. The Honduran system also lacks incentives to encourage high quality teacher performance. Teachers are not encouraged to address the issue of exploitive child labor in their communities or to engage working children in their classrooms. In addition, Honduran civil society lacks awareness about the problems created by exploitive child labor and lack of schooling, as well as the capacity to address such issues. Finally, information on the incidence of exploitive child labor, as well as best practices for addressing it, are not widely shared.

Nicaragua

In 2000, a Ministry of Labor Survey on Child Labor estimated that 314,000 or 17.7 percent of children between the ages of 5 to 17 years in Nicaragua worked. Children work in such sectors and occupations as agriculture, fishing, stockbreeding, garbage scavenging, street vending, and domestic service. They also engage in the trafficking of drugs and commercial sexual exploitation. Approximately 50 percent of working children do not attend school.

A significant percentage of Nicaragua's education budget continues to be earmarked to support tertiary, rather than basic, education. There is a need to strengthen the commitment of Nicaraguan society at large—communities, the private sector, teachers, teachers unions, and government agencies—to the importance of primary education for all of the country's children, including working children. In addition, and as with other countries in the region, teachers receive little training on the issue of exploitive child labor, and are provided few incentives for good performance, such as encouraging students to attend, or spending extra time to assist children who combine school and work. Although student attendance is monitored at the national level, there is room for more incentives from schools and the Ministry of Education to encourage school

attendance. Finally, after many years of civil conflict, the political tensions that continue to exist in the country have slowed the exchange of information on exploitive child labor and on strategies to promote education for working children.

The Dominican Republic

The Ministry of Labor's National Child Labor Survey, published in 2002, estimates that 18 percent of children ages 5 to 17 years (428,720) are working. Children can be found working in agriculture, services in the informal sector (shoe shiners, street vendors), domestic service, and prostitution. In addition, reports indicate that Haitian children may be found working in the Dominican Republic. There are also reports that some Haitian children have been trafficked to the Dominican Republic, including for purposes of exploitive child labor.

In the Dominican Republic, many gaps and challenges remain that hamper efforts to prevent exploitive child labor through education, and provide access to education for child laborers. These include a highly centralized education administration, lack of school access in rural areas, lack of vocational schools, and a less than adequate system for measuring and monitoring education results. Moreover, lack of official identity papers and documentation are serious barriers to school enrollment and affects thousands of children most vulnerable to exploitive child labor—rural children, and those of Haitian descent. Several programs have been developed to address the problem of lack of documentation, but none has been broadly successful. Haitian children are also likely to face language barriers to education.

Many Dominican teachers lack motivation to improve their teaching style or to comply with school schedules because of low salaries. Teacher strikes for higher pay are frequent. Time in-class and time spent on learning tasks are lower in the Dominican Republic than in most other Latin American countries. Teachers in rural areas may also miss school because of transportation difficulties. In most Dominican classrooms there is a lack of active, participatory, student-centered pedagogy. Also, teachers are not prepared to deal with children with special needs such as those of working children, and children at risk of or engaged in commercial sexual exploitation.

Furthermore, the high levels of overage students relative to grade discourages many children from continuing altogether, and results in permanent desertion and premature entry into labor.

Southern Africa

Botswana

In 2001, the ILO estimated that 13.95 percent of children ages 10 to 14 in Botswana were working. In urban areas, increasing numbers of street children, many of them abandoned or HIV/AIDS orphans, engage in begging, or work in the informal sector and prostitution. In rural areas, young children work as cattle tenders and domestic servants and help their families with subsistence agriculture and household chores. Young girls who are pregnant or who have had children often drop out of school and are sometimes forced to work as domestic servants or prostitutes. Children of migrant workers are often found assisting their parents at the workplace.

Most children who work in the street are from very poor families, live in abject poverty, have low levels of literacy and education, and have parents who are un-or under-employed. These families cannot afford to send their children to school or provide for their basic necessities. Necessity forces these children to beg on the streets and/or to work in order to help provide for themselves and their families. Abandoned children and HIV/AIDS orphans are often homeless and are at even greater risk of working in exploitive and dangerous forms of labor.

Although the government has attempted to provide opportunities for children to obtain primary education, only 50 percent of students who complete their Junior Community School certificate go on to secondary school due to lack of spaces and schools. In addition, there are inadequate vocational education opportunities for children who complete primary school and significant disparities in access to education between urban and rural populations. This leaves a large number of children vulnerable to working in exploitive labor situations.

Significant gaps/needs remain in providing access to quality education for child laborers, including: (1) Limited public awareness and research concerning children's participation in exploitive labor; (2) inadequate harmonization of definitions and laws protecting core labor standards, including exploitive child labor issues, with provisions outlined in international conventions, as well as poor capacity to implement and enforce laws; (3) poor school transportation, infrastructure, and material conditions in rural areas; and (4) lack of vocational, primary and secondary educational opportunities for street children, abandoned children, children-headed households, pregnant girls or teenage mothers, children of migrant workers, HIV/AIDS orphans, and older children.

Lesotho

In 2000, the Government of Lesotho and UNICEF estimated that 29 percent of children ages 5 to 17 were working, though not in the formal sector. Although there is very little information or research on exploitive child labor in Lesotho, a growing number of street children and HIV/AIDS orphans in major cities and towns are thought to be working in the informal sector as prostitutes and street vendors, and in other informal activities such as domestic service. The largest number of children found working in Lesotho are herd boys, some as young as 4, who are found in rural districts such as Mokhotlong, Leribe and Quacha's Neck.

Herding animals is a traditional work activity for boys in Lesotho, begun at a very young age. These boys do not usually have the opportunity to attend school and the work becomes more difficult in the winter when the conditions are much more harsh. Children working in domestic work, primarily girls, work very long hours for little pay. These girls are sometimes subjected to sexual abuse by their employers and most often do not have the opportunity to attend school because they cannot afford it or do not have the time to attend. The majority of street children come from very poor families or are HIV/AIDS orphans, which has left them as heads of household or homeless. Increasingly, they are unable to attend school because they must provide for sick family members, their brothers and sisters, and themselves.

Rural districts still face difficulties in providing free education to children due to the long distances to and from school and inadequate facilities. Moreover, given the increased enrollment due to the incremental introduction of free primary education (in 2004, it will be extended to grade 5), classes are overcrowded and the quality of the teachers is sometimes substandard. Given this situation, children who are older than the average school-going age often lose interest and drop out.

In light of these barriers and gaps, the most immediate needs for improving education opportunities for children working or at-risk of working include: (1) Public awareness and research concerning children's participation in exploitive labor; (2) increasing capacity of the government, labor unions, and NGOs to combat the issues relating to working children; (3) improving primary school opportunities, counseling, and/or the provision of life skills (including vocational or non-formal education) for street children, domestic workers, and HIV/AIDS orphans; (4) improving learning facilities and promoting teacher training; and (5) vocational and skills training opportunities for older children, dropouts, or those who do not otherwise have an opportunity to attend primary or secondary school.

Namibia

In 2001, the ILO estimated that 16.5 percent of children ages 10 to 14 in Namibia were working. Although there are a growing number of street children and HIV/AIDS orphans in major cities and towns, the majority of working children live in rural areas where they work in agriculture, domestic work, and do household chores such as collecting firewood and fetching water. Children from disadvantaged populations (San and Ovahimba peoples), whose parents often work on commercial and communal farms, are also usually working (unofficially and unpaid) in order to supplement the labor of their parents. Young mothers, who have not completed school and find it very difficult to later re-enroll, work as domestic servants and must often allow their children to work for their employers in order to help pay for boarding and food costs.

The Government of Namibia spends almost one third of its annual budget on education. Primary education is compulsory in Namibia and although the Constitution mandates that primary education shall be free, in practice there are numerous fees for such items as uniforms, books, and school improvements. The country has relatively high school enrolment rates. However, a January 2003 report, entitled Educationally Marginalised Children in Namibia, identified 13 groups of

educationally marginalized children. This report includes recommendations on how to improve access to education for these groups within the government's poverty reduction strategy, yet little has been done to implement them.

School fees and other barriers to education have provoked some children from poor households to drop out of school and work on the streets in cities and towns. Moreover, children aged 10 or older, who have never enrolled in school cannot enroll in grade one and are not able to enroll in the National Literacy Program of Namibia until they are 15. This leaves such children between the ages of 10 and 15 with virtually no opportunities for education. Children from the San (in the Omaheke, Otjozondjupa, Oshikoto, and Ohangwena regions) and Ovahimba populations (in the Kunene region) lack adequate opportunities for primary, vocational, and non-formal education due to long distances to schools and substandard educational environments.

Given these barriers and gaps to education, the most immediate needs for improving education opportunities are: (1) Increased public awareness and research concerning children's participation in exploitive labor; (2) increased capacity and promotion of coordination between government ministries and programs relating to exploitive child labor and education; (3) improved access to appropriate, attractive, and relevant education (including formal, vocational, and non-formal education) for older children with little or no formal education and children living in remote areas; (4) increasing the number of qualified teachers and reducing overcrowded classrooms, especially in the north; and (5) the provision of educational opportunities, counseling, or provision of life skills for street children, HIV/AIDS orphans, and vulnerable children.

South Africa

In 1999, a child labor survey conducted by the South Africa Statistical Agency estimated that 36 percent of children ages 5 to 17 in South Africa were working. Children are most often found working in the rural agricultural sector on commercial, subsistence, and small farms in the Eastern, Free State, KwaZulu-Natal, Limpopo, Mpumalanga, North West, and Western Cape provinces. These children have sometimes been forced into forms of indentured service on farms, where they work alongside their parents for little or no payment. In the wine industry in the Western and Northern Cape provinces, the practice of "dop" payment (paying adults and children with alcohol for their work) is prevalent, causing devastation to children and families.

In urban areas, there are increasing numbers of street children who beg, work in the informal sector, or are child prostitutes. There is evidence that cases of children trafficked to, from, and within South Africa for purposes of commercial sexual exploitation are on the rise. Street children and child prostitution/trafficking tends to be located in the cities of Johannesburg/Pretoria, Bloemfontein, and Pietermaritzburg, as well as the port towns of Cape Town, Port Elizabeth, East London, and Durban. Children are also involved in domestic service, manufacturing, construction, and retail business.

Although there have been considerable efforts to improve the quality of and access to basic education, children from agricultural regions and deep rural areas of the country still have difficulties accessing quality education due to the long travel distances to school. School fees, uniforms, and costs of materials associated with education still prevent some poor children from attending school. Thirty-five percent of children who enter primary school drop out within 5 years of enrolling, which leaves them vulnerable to entering exploitive labor.

Inequities in the quality of education exist predominately for black students in townships and rural areas. Approximately 80 percent of schools in the country serve black students and although education is no longer segregated, schools that traditionally have served black students remain under funded, have severe infrastructure deficiencies, and have unqualified or under qualified teachers. Another challenge facing children is the closure of "farm schools." After the change in government in 1994, the South Africa Schools Act mandated that all "farm schools" meet minimum educational standards and be transferred to the government for conversion into public schools. Farmers have instead been closing farm schools rather than turning them over to the government. Although these schools are the most inferior schools in the country, their closure signifies that thousands of children have lost their only opportunity for education.

Despite the attempts by the government to guarantee that all children have access to quality education, approximately 10 percent (1.3 million) of all children of school going age (7 to 15) either do not attend school, do not attend school regularly, or are at significant risk of leaving formal schooling before age 15 or grade 9. The most immediate needs include: (1) Increased public awareness and research concerning children's participation in exploitive labor; (2) improved access to quality basic education in rural and agricultural areas; (3) opportunities for alternative basic education programs (including vocational, technical, and skills training programs) for street children and children in rural and ex-homeland areas; (4) teacher training, especially in rural and ex-homeland areas; and (5) the provision of skills training for teachers, government officials, and NGO stakeholders in identifying and helping children in need (counseling, legal protection, education, etc.).

Swaziland

In 2000, the Government of Swaziland and UNICEF estimated that 11.3 percent of children ages 5 to 14 were working. Children are most often found working beside their parents in commercial and subsistence agricultural (especially in the Eastern region). Young girls often work in domestic service, sometimes facing sexual exploitation by their employers. Boys in rural areas often work as herders. Increasing numbers of children are being orphaned or otherwise forced to the streets (especially in Mbabane and Manzini) and are found begging, working in the informal sector, or in prostitution.

The National Emergency Response Council to HIV/AIDS (NERCHA) implements an assistance program for orphans, which provides food and basic needs, as well as small stipends, care points, and protection services. The emphasis of this program is to keep orphans in their communities in an effort to discourage them from moving to other places where they may be at greater risk of exploitation. Siblings of children who head households are also provided with food so that all children can attend school and do not have to work to pay for food.

Education is neither free nor compulsory in Swaziland. However, primary school enrollment is relatively high despite the school fees and other associated costs that students must pay. Due to the increasing needs of vulnerable children, at the end of 2002, the King of Swaziland committed E16 million (US $2.5 million) to pay school fees for orphaned children. It is envisioned that this initiative will continue until free primary education is introduced.

Children in Swaziland still face barriers to education. The most important needs include: (1) Increased public awareness and research concerning children's participation in exploitive labor; (2) improved school infrastructure and transportation to schools in rural areas; (3) increased awareness of exploitive child labor issues and the importance of education among parents and communities, as well as improved coordination of non-formal and formal education initiatives; (4) the provision or elimination of school fees, materials, uniform or food in order to improve children's access to education; and (5) opportunities in both urban and rural areas for older and vulnerable children to receive non-formal, vocational, and or technical education, as well as counseling services.

For additional information on exploitive child labor in Central America and the Dominican Republic, as well as Southern Africa, applicants are strongly encouraged to refer to The Department of Labor's 2002 Findings on the Worst Forms of Child Labor available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2002/overview.htm.*

[FR Doc. 04–10306 Filed 5–5–04; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Ecuador; Combating Exploitive Child Labor and Trafficking Through Education in Indonesia; Combating Exploitive Child Labor Through Education in Panama; Combating Exploitive Child Labor Through Education in Turkey

May 6, 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 04–08.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

DATES: Deadline for Submission of Application is June 7, 2004.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $18 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 Ecuador (up to $3 million), Indonesia (up to $6 million), Panama (up to $3 million), and Turkey (up to $6 million). The activities funded will complement and expand upon existing projects and programs to improve basic education in these countries, and, where applicable, provide access to basic education to children in areas with a high incidence of exploitive child labor. Applications must respond to the entire Statement of Work outlined in this Solicitation for Cooperative Agreement Applications. In Ecuador, activities under this cooperative agreement will work within the framework of the government's Timebound Program to provide access to improved basic and vocational education for children who are working, removed from work, or prevented from working in the banana and cut flower industries. In Indonesia, activities under this cooperative agreement will expand access and quality of basic education for children at-risk of being trafficked or who have been trafficked for exploitive labor, particularly in commercial sexual exploitation or domestic service. In Turkey, activities under this cooperative agreement will work within the government's Timebound Policy and Program Framework to expand access to basic and vocational education for children working in the agricultural sector, particularly children engaged or at-risk of engaging in seasonal migration work.

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 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 Ecuador, Indonesia, Panama, and Turkey. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2003, Public Law 108–7, 117 Stat. 11 (2003). 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. Full-time child workers are generally unable to attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, USDOL has provided over $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 appropriated US $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 enhanced future employability of children around the world by increasing access to basic education for children removed from work or 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 At Risk and Working Children, Countries Background, 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 rate of exploitive child labor, they manifest themselves in specific ways in each country of interest in this solicitation.

In Ecuador, activities under this cooperative agreement will work within the framework of the government's Timebound Program to provide access to quality basic and vocational education to children working or at-risk of working under hazardous conditions in the banana and cut flower industries. In Indonesia, activities under this cooperative agreement will expand access to and quality of basic education for children at risk of being trafficked or who have been trafficked for exploitive labor, particularly in commercial sexual exploitation or domestic service. In Panama, activities under this cooperative agreement will provide educational opportunities for children working or at-risk of entering into hazardous commercial agriculture. In Turkey, activities under this cooperative agreement will work within the framework of the government's Timebound Program to expand access to basic and vocational education for children working under hazardous conditions in the agricultural sector, particularly children working or at risk of working in seasonal migration work. Applicants should 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, children still working in a particular sector) and how capacity building and policy change can be used to address these barriers and education needs. Short background information on education and exploitive child labor in each of the countries of interest is provided below. For additional information on exploitive child labor in these countries, applicants are referred to *The Department of Labor's 2002 Findings on the Worst Forms of Child Labor* available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2002/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*.

Ecuador. In 2001, Ecuador's National Institute of Statistics and Censuses estimated that 24.9 percent of children 5 to 17 years of age, or 775,753 children, were working in Ecuador. Approximately 60 percent of these children were found working in agriculture, with other children found working in retail commerce, domestic service, construction, and in hotels and restaurants. The majority of working children are found in the rural areas of the highlands, the Amazon region, and urban coastal areas. In addition, 39 percent of working children do not attend school due to factors such as a lack of economic resources, long work hours, and lack of interest.

While nearly universal coverage of primary education exists in urban areas, 20 percent of rural children of school age do not attend school and only 36 percent of rural children who enter primary school complete it. The average number of years of schooling in rural areas is 4.8 years, compared to the national average of 7.5 years. This number drops to 3.7 years in indigenous communities. For many poor families, the costs associated with education are often prohibitive, especially for those in rural areas and indigenous communities. Access to secondary schools is also particularly scarce in rural areas compared to urban areas and older children and adolescents often lack opportunities to receive vocational education or skills training.

Program efforts under this solicitation must focus on developing innovative and effective approaches to improve access to basic and vocational/technical education to children working or at risk of entering work in the banana and cut flower industries. Applicants must work within the framework of the Government of Ecuador's *National Plan for the Progressive Elimination of Child Labor, 2003–2006*. Geographic target areas must include the banana provinces of Los Rios, Guayas and El Oro on the coast, and the cut-flower provinces of Pichincha and Cotopaxi in the highlands.

Applicants are strongly encouraged to support the concept of public-private partnerships and corporate social responsibility by building on preliminary efforts in the banana sector to provide basic and vocational education, and expanding them into the cut-flower industry. Public-private partnerships are expected to support family and community participation within the context of education, especially in indigenous communities. Lessons learned could eventually be applied to similar public-private partnerships in different sectors throughout the country and the region. Proposals funded under this solicitation are encouraged to leverage resources from the private sector to promote collaboration with the Ministries of Education and Culture, Labor and Human Resources, and other relevant ministries that have the responsibility to provide basic and technical/vocational services to vulnerable children living and working in the regions mentioned above. Applicants must also coordinate with current government initiatives, such as the *Bono de Desarrollo Humano* and *Redes Amigas*, and SECAP, as well as with private institutions and nongovernmental organizations (NGOs) working in the same regions and with similar populations, such as the ILO's International Program on the Elimination of Child Labor's (IPEC) Timebound Program where that would further the goals of this program.

Indonesia. In 2000, the ILO estimated that 7.8 percent of children 10 to 14 years of age, or 1.7 million children, were working in Indonesia. Boys in the same age group were working at slightly higher rates (8.7 percent) than girls (6.9 percent). Children have traditionally worked alongside their families in agricultural or domestic work, but are also found working in hazardous activities that include garbage scavenging, street peddling, deep-sea fishing, drug trafficking, and the commercial sex trade.

Trafficking in persons, both within and across borders, is known to be a significant problem for women and children in Indonesia. In particular, children are trafficked internally from rural areas into large cities to assist their families by earning extra income. Children are most commonly trafficked for migrant work, domestic work, and commercial sexual exploitation. It is estimated that between 254,000 and 422,000 children are vulnerable to being trafficked for domestic work or commercial sexual exploitation in Indonesia. The nature and relationships of traffickers vary and can include recruiting agents, government officials, employers, brothel owners and managers, marriage brokers, parents and relatives, and spouses.

Since 1990, the formal education system has included 9 years of compulsory schooling; 6 years of primary schooling, *SD-Sekolah Dasar*, and 3 years of junior secondary schooling, *SLTP-Sekolah Lanjutan Tingkat Peratma or SMP-Sekolah Menengah Pertama*. While education is compulsory for children 7 to 15 years, it is not free. Parents have a responsibility to contribute to the financing of schools at the community level. Formal school fees and informal levies, plus the cost of books and uniforms, are often more than poor families can afford. Transportation costs can also be prohibitive for poor families. There are shortages of teachers in many areas, existing teachers are often poorly trained, and school curricula lack relevant skills training.

The lack of access to schools beyond the primary level contributes to low transition rates to and high dropout rates from junior secondary schools. The lack of access to junior secondary schools prevented an estimated 6 million children from attending school in the 2000/2001 school year. Children, especially girls, in this grade level and age group are particularly vulnerable to dropping out of school and entering the worst forms of child labor. For children who drop out of school, the reentry to the formal school system can be difficult due to the psychological and emotional trauma that child victims of the worst forms of child labor including trafficking have suffered.

The provinces of Bali, Central Java, East Java, East Kalimantan, Jakarta, North Sulawesi, North Sumatra, Papua, Riau, West Java, West Kalimantan, and the eastern island provinces of West Nusa Tenggara (NTB) and East Nusa Tenggara (NTT) are known as sending and/or receiving areas for children trafficked for commercial sex or domestic work. Applicants under this solicitation are requested to select from four to a maximum of six provinces in which to focus interventions in selected areas where there is a high incidence of child trafficking for exploitive labor. Applicants are strongly encouraged to focus program interventions on two main populations: (1) children in primary school at risk of dropping out, particularly those living in areas where there is limited or no access to junior secondary schools, and (2) children who have been trafficked and wish to return

and reintegrate into formal school or pursue alternative education, such as vocational/technical education and skills training.

Applicants must work to support the policy of decentralization and within the framework of the Government of Indonesia's Presidential Decree No. 59/2002, *National Plan of Action for the Elimination of the Worst Forms of Child Labor.* Proposals must demonstrate how project activities will complement, support, and broaden existing efforts of international agencies, local NGOs, and the Government of Indonesia. In the development of proposals, applicants are encouraged to consult with the Coordinating Ministry for People's Welfare, the State Ministry for Women's Empowerment, the Ministry of National Education, the Ministry of Manpower and Transmigration, other relevant government ministries, and local government authorities and civil society groups in prospective project locations. Applicants are also encouraged to complement and strengthen, where feasible, educational activities in geographical areas where the ILO/IPEC's program *Support to the Indonesian National Plan of Action and the Development of the Time-Bound Program for the Elimination of the Worst Forms of Child Labor* will focus on the prevention and withdrawal of children trafficked for prostitution. These areas include Central Java, East Java, Greater Jakarta, West Java, and Yogyakarta. Applicants are strongly encouraged to coordinate with other U.S. Government-funded or international donor activities, including the U.S. Government's announced Education Initiative for Indonesia that will be carried out through the U.S. Agency for International Development (USAID).

Panama. In 2000, the Panama Census and Statistics Directorate estimated that 57,524 children ages 5 to 17 years in Panama were working (7.6 percent of this age group). The highest concentrations of child laborers can be found in the provinces of Panama (28.4%), Veraguas (15.4%), and in indigenous areas (20.4%). Children are found working in rural areas during the harvesting periods for sugar cane, coffee, bananas, melons, and tomatoes. Most working children in Panama live in rural and indigenous areas, and are engaged in agricultural activities. Children in Panama also work as domestic servants. Child labor also exists in urban areas, especially in the informal sector. Children are also given tips to bag groceries and clean in supermarkets in urban sectors in Panama. The commercial sexual exploitation of children has also been reported.

In Panama, education is free and compulsory through the ninth grade. There are instances of children dropping out of school, especially in rural and indigenous areas. Many rural areas do not have access to secondary education and the government does not cover transportation costs. Children from poor families often do not attend school due to lack of transportation and the need to migrate with their families during the harvesting season. Parents must buy books and school supplies for their children to attend school. There are sometimes matriculation fees, which can also be prohibitive. According to some estimates, only 55% of working children have completed primary school, and 22% have not completed any grade. School attendance is a particular problem in the Darien province and in indigenous communities. About one-third of children from indigenous communities miss the first 3 months of the academic year to work in the coffee harvest. According to the Ministry of Youth, Women, Children and Family, 82 percent of the children in rural areas are absent from school during the harvest season.

The provinces of Chiriquí, Coclé, Herrera, Veraguas, and Los Santos have been identified as some of the country's most populous agricultural areas. Applicants under this solicitation are requested to focus educational interventions in some or all of the provinces identified above, and/or in the Darien Province, in order to reach children engaged in hazardous agricultural and/or seasonal migration work and children who are at high risk of entering the worst forms of child labor. Applicants are strongly encouraged to focus program interventions on: (1) children working or at risk of working in commercial agriculture, particularly in the coffee, sugarcane, melon, tomato, and banana sectors, (2) including indigenous and migrating children.

Applicants must demonstrate their understanding of risk factors for working children and educational barriers to children in the selected areas, and knowledge of any exploitive child labor and education projects or programs already being carried out in these areas by international agencies, local NGOs, and the Government of Panama. In the development of proposals, applicants are encouraged to consult with the Ministry of Labor, the Ministry of Education, the Ministry of Youth, Women, Children, and Family, other relevant government ministries, local government authorities, and civil society groups in prospective project locations.

A project awarded under this solicitation should provide or facilitate the direct delivery of education to children working in hazardous commercial agriculture, giving particular consideration to the coffee, sugarcane, melon, tomato, and banana sectors, and to migrant and indigenous populations. Teachers working in rural and indigenous/migrant communities should be trained in the special needs of child laborers.

The project should develop innovative ways to provide remedial education, accelerated learning, and other forms of non-formal education to bridge the gap that exists in education delivery. Applicants should develop creative and innovative methods to reach indigenous, migrant, and/or rural communities. An education scheme could include a training/skills component, which would give them the tools to become better prepared and skilled workers once they reach legal working age, or to fill other identified economic demands in the rural commercial agriculture regions of Panama. A project could support and encourage vocational education, especially in the aforementioned sectors.

The project should also encourage private-public partnerships in an effort to maximize resources focused on exploitive child labor and education activities, particularly in the commercial agriculture sector. The project could also use leveraged resources from the private sector to promote collaboration with the Ministries of Education, Labor and Youth, Women, Children, and Family to provide basic and technical/vocational services to vulnerable children living and working in this area. Lessons learned could eventually be applied to similar public-private partnerships in different sectors throughout the country and the region.

Applicants are encouraged to consider the differences in the work activities undertaken by boys and girls and other gender-specific obstacles that keep children out of school to develop gender-sensitive interventions.

Turkey. According to the 1999 National Child Labor Survey conducted by the State Institute of Statistics, the number of children ages 6 to 14 working for a wage in Turkey was estimated to be 511,000. Over 1.1 million (27.9 percent) of older children, aged 15 to 17, were also working. In urban areas, children work in auto repair, metal and woodworking, the production of

clothing, textiles, footwear, and leather goods, and domestic service. In rural areas, the majority of children are seasonal agricultural workers. Children who perform seasonal migrant work rarely attend school and move from region to region with their families to pick tobacco, nuts, fruit, and cotton. These children endure dangerous working conditions and long work hours. They are often too tired to concentrate on their studies, or do not have access to schools. The provinces of Gaziantep, Sanliurfa, Batman, Mardin, Aydin, and Mugla have been identified as areas with many seasonal migrant working children.

Applicants under this solicitation are requested to focus educational interventions in all six of the provinces identified above in order to reach children working or at-risk of working under hazardous conditions in seasonal migrant work and children who are at high risk of entering other worst forms of child labor. Applicants must consider the differences in the work activities undertaken by boys and girls and other gender-specific obstacles that keep children out of school to develop gender-sensitive interventions. Applicants must demonstrate their understanding of risk factors for working children and educational barriers to children in the selected areas, and any work on exploitive child labor and education already carried out or being carried out in these areas by international agencies, local NGOs, and the Government of Turkey. For example, ILO/IPEC and the European Commission are currently supporting exploitive child labor elimination activities in the provinces of: Adana, Ankara, Antalya, Bursa, Cankiri, Corum, Diyarbakir, Elazi, Erzurum Gaziantep, Istanbul, Izmir, Kastamono, Kocaeli, Ordu, Sanliurfa, Sinip, and Van. Every effort must be made to coordinate and collaborate with these organizations to avoid duplicative efforts.

Program efforts under this solicitation are expected to provide access to basic and vocational/technical education to children working in the worst forms of child labor identified in the *Time-Bound Policy and Program Framework for the Elimination of Child Labor in Turkey* (TBPPF), particularly on developing innovative ways to provide remedial education, accelerated learning, and other forms of non-formal education to bridge the gap that exists in education delivery. Applicants must develop creative and innovative methods, while drawing on and enhancing existing or previous successful models, such as distance learning and mobile schools for the delivery of basic education to these children.

Applicants are strongly encouraged to focus program interventions in Turkey on at least two areas: (1) At the national education policy level, targeting mainstreaming exploitive child labor issues within the national education strategy, and (2) at the provincial and local levels, focusing both on children working under hazardous conditions in the agricultural sector and on the communities where they live and work. Applicants must work within the framework of the Government of Turkey's TBPPF. Close coordination and communication with the Ministry of Labor and Social Security's (MLSS) Child Labor Unit and the Ministry of National Education (MONE) during the design and implementation of the project funded under this solicitation must be maintained throughout the project period. Applicants are expected to encourage MLSS and MONE and all other relevant line ministries to coordinate and collaborate in order to specifically take into account the special education needs of the working children.

Note to Applicants for All Countries: Applicants are encouraged to include letters of endorsement from the host government's Ministry of Labor and Ministry of Education with the proposal. All applicants must have country presence, or partner with an established and eligible organization in that country.

For additional information on exploitive child labor in Ecuador, Indonesia, Panama, and Turkey, applicants are strongly encouraged to refer to *the Department of Labor's 2002 Findings on the Worst Forms of Child Labor* available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2002/overview.htm.*

B. Statement of Work

Taking into account the challenges to educating working children in each country of interest, the applicant will facilitate, and implement, as appropriate, creative and innovative approaches to promote policies that will enhance the provision of educational opportunities to children engaged in or removed from exploitive child labor, particularly the worst forms. The expected outcomes/results of the project are, through improved policies and direct education service delivery, as applicable, to: (1) Increase educational opportunities and access (enrollment) for children who are engaged in, at risk of, and/or removed from exploitive child labor, particularly its worst forms; (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) (i). 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, community-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.* This response will be the foundation for the final project document that will be approved after award of the cooperative agreement.

If the application does not propose interventions aimed toward the target group and geographical areas as

identified (where applicable), then the application may 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 should 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.

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 no later than September 30, 2004.

Up to US $18 million will be awarded under this solicitation, with up to $3 million for Ecuador, $6 million for Indonesia, $3 million for Panama, and up to $6 million for Turkey. 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. Any sub-contractor must be approved by USDOL.

III. Eligibility Information

A. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based or community-based organizations, capable of successfully developing and implementing education programs for working children or children at risk of entering exploitive work in the 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 countries of interest, particularly local 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 country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the cooperative agreement. Applicants applying for more than one country must submit a separate application for each country. If applications for countries are combined, they will not be considered. (All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083), which is available online at *http://www.dol.gov/ILAB/grants/sga0408/bkgrdSGA0408.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.

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, as 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 and in-kind contributions is strongly encouraged.

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 projects or activities for USDOL will be taken into account. 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 will not be penalized.

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, and in the **Federal Register**, 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 04–08, Washington, DC 20210, not later than 4:45 p.m. eastern time, June 7, 2004. Applicants may submit applications for one or more countries. In the case where an applicant is interested in applying for a cooperative agreement in more than one country, a separate application must be submitted for each country.

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 that two (2) pages. (The table of contents and abstract are not included in the 45-page limit for Part II.)

Part I of the application 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/sga0408/bkgrdSGA0408.htm.* Copies of these forms are also available online from the U.S. General Services Administration Web site at *http://contacts.gsa.gov/webforms.nsf/0/B835648 D66D1B8 F985256 A72004 C58C2/$file/sf424.pdf* and *http://contacts.gsa.gov/webforms.nsf/0/5AEB1 FA6FB3 B832385256 A72004C 8E77/$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 must provide 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 (B) of this

solicitation) and address each of the Application Review Criteria found in Section V.

The Part II technical application must not exceed 45 single-sided (8½" x 11"), double-spaced, 10 to 12 pitch typed pages for each country, and must include responses to the application evaluation criteria outlined in this solicitation. Part II must include a project design document submitted in the format shown in appendix A. The application should 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 and Times

Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: Solicitation 04–08, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express and 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 4:45 p.m. eastern time, June 7, 2004, 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 30 days from the date of publication in the **Federal Register**; 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 June 7, 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. The Procurement Service Center on the application wrapper or other documentary evidence of receipt maintained by that office.

Confirmation of receipt can be made with 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% 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 leverage funds or in-kind contributions from local partners 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 guarantee.

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 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-awardees, 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-awardees, 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-awardees meet these criteria.

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 (2) 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 below. 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) and outlined in appendix A. The applicant's proposal should describe in detail the proposed approach to comply with each requirement.

This component of the application should 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 implementing environment in the selected country. When preparing the project document outline, the applicant should at minimum include a description of:

a. *Children Targeted*—The applicant must identify which and how many children will 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 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 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. For more information on the Child Labor Education Initiative's common indicators and for examples of commonly used education 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 so as to reflect budget/performance integration. The budget should be linked to the activities and outputs of the implementation plan listed above. This section of the application should 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 should allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities. When developing their applications, applicants should allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct costs. Preference may be given to applicants with 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 countries of interest.

b. *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, local registration of organization. An applicant must also demonstrate a country presence, independently or through a relationship with another organization(s) with 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 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 financial audit must accompany the application,.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 agreement.

e. *Experience*—The application must include information about previous grant, 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.

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. Information provided on the experience and educational background of personnel should include the following:

a. 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.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. 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 should be clearly delineated to ensure responsiveness to the needs of USDOL.

Note to All Applicants: USDOL strongly recommends that key personnel allocate at least 50 percent of their time to the project and be present in the project country. 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 part of the application.

In this section, the following information must be furnished:

(1) *Key personnel*—For each country 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.

(a) A *Project Director* to oversee the project and be responsible for implementation of the requirements of the cooperative agreement. The Program 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 will 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 preferred, as is a similar knowledge of the official language(s) spoken in the target countries.

(c) A *Monitoring and Evaluation Officer* who will 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 domains will be given special consideration.

(2) *Other Personnel*—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation.

(3) *Management Plan*—The management plan must include the following:

(a) A description of the functional relationship between elements of the project's management structure; and

(b) The responsibilities of project staff and management and the lines of authority between project staff and other elements of the project.

(4) *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.

(5) *Roles and Responsibilities*—The applicant must include a resume and description of the roles and responsibilities of all personnel proposed. Resumes must be attached in an appendix. 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 or income generation projects for adults that 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 designation. 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 appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. If during project implementation, a Grantee is found in violation of U.S. government regulations, 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 will also be required to 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 and any others that subsequently come into effect:

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—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

The applicant shall 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 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.

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 shall involve only specified commitments for which a need existed during the cooperative agreement period and which 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 shall be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

All equipment purchased with project funds should be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantees will determine how to best allocate equipment purchased with project funds in order to ensure sustainability of efforts in the projects' implementing areas.

5. Site Visits

USDOL, through its authorized representatives, has the right, at all 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 shall provide and shall 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 shall 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 must be 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 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 performance will also be developed by a Grantee and approved by USDOL. Unless otherwise indicated, a Grantee must submit copies of all required reports to ILAB by the specified due dates. Specific deliverables are the following:

1. Project Design Document

Applicants will prepare a preliminary project 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/sga0408/bkgrdSGA0408.htm.*) The project document will include a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable and project budget. The narrative will address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section below.

Within six months after the time of the award, the Grantee will 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 will 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 MPGs distributed after the award. Grantees must furnish a typed technical progress report and a financial 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 (PSC 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 country. Subsequent annual work plans will 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, 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 will be developed in conjunction with the logical framework project design and common indicators for GPRA reporting selected by ILAB. The plan will include a limited number of key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection will be tied to the indicators of the project design document and the performance monitoring plan. A monitoring and evaluation plan will 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 internal or external evaluation team. All final evaluations will be external and independent in nature. A Grantee must respond in writing to any comments and recommendations resulting from the review of the mid-term report. The budget must include the projected cost of mid-term and final evaluations.

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 Child Labor Education Initiative common indicators.

Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs.

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. Production of Deliverables

1. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL/ILAB, for approval, all media-related, awareness-raising, and educational materials developed by it 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.

2. Acknowledgment of USDOL Funding

USDOL has established procedures and guidelines regarding acknowledgment of funding. USDOL requires, in most circumstances, the following must 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:

a. 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.

b. 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."

In addition, 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. USDOL is not obligated to make any awards as 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 do not waive any cooperative agreement requirements and/or procedures.

Signed at Washington, DC, this 30th day of April, 2004.

Lisa Harvey,

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)
   - 3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework)
   - 3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration)
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 the DOL
   - 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: Out-put Based Budget example

(A worked example of a Logical Framework matrix, an Out-put Based Budget, and other background documentation for this solicitation are available from the USDOL/ILAB Web site at *http://www.dol.gov/ILAB/grants/sga0408/bkgrdSGA0408.htm.*)

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BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. C–08]

Nationwide Site-Specific Targeting (SST) Inspection Program

AGENCY: Occupational Safety and Health Administration, USDOL.

ACTION: Request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is soliciting comments on its nationwide Site-Specific Targeting (SST) inspection program, which was first implemented in April 1999 and updated annually, in order to determine more accurately how this program is accomplishing its goal of effectively using OSHA's enforcement resources.

DATES: Written comments must be submitted on or before July 6, 2004.

ADDRESSES: Send two copies of your comments to Docket Office, Docket No. C–08, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–693–2350. Comments of 10 pages or fewer may be faxed to the Docket Office at the following FAX number: 202–693–1648, provided that the original and one copy are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to *http://ecomments.osha.gov*. Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the docket office address listed above. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

FOR FURTHER INFORMATION CONTACT: Richard E. Fairfax, Occupational Safety and Health Administration, Directorate of Enforcement Programs, Room N–3119, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202–693–2100. For electronic copies, contact OSHA's Web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Occupational Safety and Health Act is to assure, so far as possible, safe and healthful working conditions for every working man and woman in the nation. In order to achieve that goal, the Act requires employers to furnish their employees with employment which is free from recognized hazards that are likely to cause death or serious physical harm, and to comply with occupational safety and health standards issued by the Secretary of Labor. In order to determine whether employers are providing safe and healthful workplaces, OSHA conducts unannounced workplace inspections as part of the Agency's overall enforcement strategy.

Of the approximately 35,000 inspections OSHA conducts in a year, about 3,000 are Site-Specific Targeting (SST) inspections. The remaining inspections are imminent danger, fatality, catastrophe, complaint, referral, follow-up, and other programmed inspections. The other programmed inspections are mainly Emphasis Program inspections, which focus on a particular safety or health hazard (*e.g.*, amputation, silica), or the hazards of a specific industry (*e.g.*, logging, nursing homes).

Since 1996, OSHA has been using the annual OSHA Data Initiative survey to collect data from employers in an effort to better identify worksites for inspection. The Data Initiative gives OSHA a targeting tool it did not previously have: the ability to determine each surveyed worksite's Lost Work Day Injury and Illness (LWDII) rate.[1] Prior to the Data Initiative, OSHA targeted its compliance efforts on an industry-by-industry basis, relying on general industry-based data received from the Bureau of Labor Statistics (BLS) to determine where to focus its enforcement program and outreach efforts. Although industry data are extremely useful for identifying categories of problems (*e.g.*, specific industries and occupations at risk, *etc.*), aggregation of data by industry masks the experience of individual employers. OSHA would not know until it arrived at an employer's facility whether the employer had a high injury-illness rate or not, only that the employer was in a high-rate industry. It was thought that using site-specific data would be a better approach. Therefore, in early 1996, the Data Initiative was established to give OSHA the capability to focus on those establishments with serious safety and health problems. The Data Initiative survey was initially sent to establishments that had 60 or more employees, but since 1999 the data surveys have been sent to establishments with 40 or more employees. Each year, OSHA sends its data survey form (the "OSHA Work-Related Injury and Illness Data Collection Form") to approximately 80,000 non-construction establishments, requesting from each employer (1) the average number of employees who worked for the employer during the prior calendar year, (2) the total hours the employees worked during the prior year, and (3) the summary injury and illness data from the employer's OSHA Log form.

With the Data Initiative in place, in April 1999 OSHA implemented its first nationwide site-specific targeting plan (known as the SST) for comprehensive programmed inspections in non-construction worksites. This program applies only to Federal jurisdiction states and has also been updated annually.[2] For the most current SST go to OSHA's Web site at *http://www.osha.gov* and click on D in the alphabet at the top of the page, then Directives, then Information Date, and finally 2004, and scroll down to April and the current SST.

The SST inspection plans are based on the self-reported injury and illness information submitted by employers in OSHA's Data Initiative. An LWDII rate is selected that will provide the number of establishments for SST inspections that OSHA anticipates it will be able to conduct during the year. From the data submitted, OSHA compiles two inspection targeting lists, a primary and a secondary list of non-construction worksites. The primary list for 1999 included the establishments that reported an LWDII at or above 16.0, which provided approximately 2,200 establishments for inspection. In 2000, and until 2004, the LWDII cut off was at or above 14.0, which provided 3,000 to 4,200 establishments. Each Federal OSHA Area Office receives a list of establishments for their primary targeting list, and is expected to complete inspections of these establishments in about a year. After an area office completes its primary list, the secondary list is used. The secondary list for 1999 included establishments that reported an LWDII of 10.0 or greater (but less than 16.0). In 2000, and until 2004, the secondary list

[1] Lost Workday Injury and Illness (LWDII) rate: This includes cases involving days away from work and restricted work activity and is calculated based on (N + EH) × (200,000) where N is the number of lost work day injuries and illnesses combined; EH is the total number of hours worked by all workers during the calendar year; and 200,000 is the base for 100 full-time equivalent workers. For example: Workers of an establishment including management, temporary, and leased workers worked 645,089 hours at this worksite. There were 22 lost workday injuries and illnesses from the OSHA 200 (totals in columns 2 and 9). The LWDII rate would be (22 + 645,089) × (200,000) = 6.8.

[2] The 1997 injury and illness data that was collected by the 1998 Data Initiative (survey) was used in the 1999 Site-Specific Targeting plan. Likewise, the 2002 data, collected by the 2003 Data Initiative, is currently being used for the 2004 Site-Specific Targeting plan.

included establishments reporting an LWDII of 8.0 or greater (but less than 14.0). To put these numbers in perspective, the national average LWDII rate for 2001 was 2.8—that is, a worksite with almost three injuries or illnesses resulting in lost work days for every 100 full-time workers.

Establishments selected for a site-specific inspection receive both a comprehensive safety and a comprehensive health inspection. Occasionally, if an employer has been greatly improving its safety and health performance, an SST inspection may be a "records only" inspection. That is, if the employer's LWDII rate, as calculated by the OSHA compliance officer during the inspection, shows the establishment to have a low LWDII rate for the last two consecutive years, then the compliance officer may confine the inspection to a review of the employer's safety and health records.

Beginning with the SST–03 plan, and continuing with the SST–04 plan, an additional factor was introduced to improve the selection of establishments for inspection. This factor is the establishment's Days Away from Work Injuries and Illness (DAFWII) case rate. The DAFWII is a component, or subset, of the LWDII. The DAFWII is comprised of injury and illness cases that involve at least one day away from work. The LWDII is comprised of cases that involve at least one day away from work or a day of restricted work activity. Under the assumption that an injury or illness which requires a day away from work is more serious than one which requires restricted work activity, using the DAFWII as a targeting criterion will further identify establishments with the greatest number of serious hazards. Therefore, under the SST–03 plan, if an establishment's LWDII rate is 14.0 or more, or its DAFWII case rate is 9.0 or more, it will be on the primary inspection list. Likewise, if an establishment's LWDII rate is 8.0 or greater (but less than 14.0), or its DAFWII case rate is 4.0 or greater (but less than 9.0), it will be on the secondary inspection list.

Due to changes in OSHA's recordkeeping regulations, which became effective January 1, 2002, the LWDII rate is being replaced by the Days Away from work, Restricted, or job Transfer (DART) rate starting with the workplace injury and illness data collected in 2002. The computation of the DART rate is almost identical to that of the LWDII.[3]

[3] Days Away from work, Restricted, or job Transferred (DART) rate: This includes cases involving days away from work, restricted work activity, and transfers to another job. It is calculated based on (N ÷ EH) × (200,000) where N is the number of cases involving days away, and/or restricted work activity, and/or job transfer; EH is the total number of hours worked by all employees during the calendar year; and 200,000 is the base number of hours worked for 100 full-time equivalent employees. For example: Employees of an establishment including management, temporary, and leased workers worked 645,089 hours at this worksite. There were 22 injury and illness cases involving days away and/or restricted work activity and/or job transfer from the OSHA 300 Log (total of column H plus column I). The DART rate would be (22 ÷ 645,089) × (200,000) = 6.8.

The intention of the SST and the Data Initiative is to help OSHA make more effective use of its enforcement resources. In order to achieve OSHA's goal of reducing the number of injuries and illness that occur at individual worksites/establishments, the SST directs enforcement resources to those worksites where the highest rate of injuries and illnesses have occurred. OSHA seeks input from the public in order to determine more accurately how its annual nationwide targeting program is accomplishing its goal of effectively directing OSHA's enforcement resources. Any suggestions that would assist the Agency in improving the SST are welcome, as well as any information as to how the SST program is perceived by the employer and worker communities. Specifically: Are the LWDII/DART rate and the DAFWII case rate appropriate measurement tools for the SST? Should OSHA consider other measures for injury and illnesses at individual establishments? If yes, what measures should be considered? Should OSHA be looking at injury and illness data over multiple years rather than in a single year? Should an establishment's priority for inspection take into account whether the establishment is in an industry with a high rate or a low rate of citations? Should the SST include additional focuses such as on specific industries, or past citation history? Are there particular areas/hazards OSHA should be focusing its enforcement efforts on?

Authority: This document is issued under Sec. 8(a) and 8(b), Pub. L. 91–596, 84 Stat. 1599 (29 U.S.C. 657).

Signed in Washington, DC, this 27th day of April, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–10316 Filed 5–5–04; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Expiring Information Collection Declaration for Federal Employment Optional Form 306, OMB No. 3206–0182

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces that the Office of Personnel Management submitted to the Office of Management and Budget a request for clearance of an expiring information collection. The OF 306, Declaration for Federal Employment is completed by applicants who are under consideration for Federal employment.

It is estimated that 474,000 individuals will respond annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 118,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Kathy Dillaman, Deputy Associate Director, Center for Federal Investigative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5416, Washington, DC 20415;

and Joseph F. Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Susan Orndorff, Management Assistant, Customer Services Group, Center for Federal Investigative Services, Office of Personnel Management, Washington, DC 20415, (202) 606–2139.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–10285 Filed 5–5–04; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 94–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 94–7, Death Benefit Payment Rollover Election for Federal Employees Retirement System (FERS), provides FERS surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1,850 RI 94–7 forms will be completed annually. The form takes approximately 60 minutes to complete. The annual burden is 1,850 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operation Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–10286 Filed 5–5–04; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 1 p.m., Tuesday, May 11, 2004; 9:30 a.m., Wednesday, May 12, 2004.

PLACE: Dallas, Texas, at the Fairmont Hotel, 1717 North Akard Street, in the Pavilion Room.

STATUS: May 11—1 p.m. (Closed); May 12—9:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Tuesday, May 11—1 p.m. (Closed)

1. Financial Update.
2. Rate Case Planning.
3. Proposed Filing with the Postal Rate Commission for Priority Mail Flat-Rate Box Pricing Experiment.
4. Negotiated Service Agreements.
5. Strategic Planning.
6. Personnel Matters and Compensation Issues.

Wednesday, May 12—9:30 a.m. (Open)

1. Minutes of the Previous Meeting, April 15, 2004.
2. Remarks of the Postmaster General and CEO.
3. Audit and Finance Committee Charter.
4. Capital Investments.
   a. Mail Processing Infrastructure Phase 2.
   b. Human Capital Enterprise—Human Resources Shared Services.
   c. Transaction Concentrator Replacement.
   d. Pittsburgh, Pennsylvania, Logistics and Distribution Center.
   e. Trenton, New Jersey, Processing and Distribution Center Facility Restoration.
5. Quarterly Report on Service Performance.
6. Quarterly Report on Financial Performance.
7. Southwest Area and Dallas District Report.
8. Tentative Agenda for the June 15, 2004, meeting in Washington, DC.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 04–10496 Filed 5–4–04; 3:03 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26438]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 30, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 25, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

Putnam New York Tax Exempt Opportunities Fund [File No. 811–6176]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 24, 2003, applicant transferred its assets to Putnam New York Tax Exempt Income Fund, based on net asset value. Expenses of $165,188 incurred in connection with the reorganization were paid by applicant, the acquiring fund, and Putnam Investment Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on March 22, 2004.

Applicant's Address: One Post Office Sq., Boston, MA 02109.

Advantus International Balanced Fund, Inc. [File No. 811–8590]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 8, 2003, applicant transferred its assets to

a corresponding series of Ivy Funds, based on net asset value. Expenses of $87,340 incurred in connection with the reorganization were paid by Advantus Capital Management, Inc., applicant's investment adviser.

Filing Dates: The application was filed on March 10, 2004, and amended on March 29, 2004.

Applicant's Address: 600 Robert Street North, St. Paul, MN 55101.

Papp Stock Fund, Inc. [File No. 811–5922], Papp America-Abroad Fund, Inc. [File No. 811–6402], Papp America-Pacific Rim Fund, Inc. [File No. 811–8005], Papp Small & Mid-Cap Growth Fund, Inc. [File No. 811–9055]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On February 23, 2004, each applicant transferred its asset to a corresponding series of the Pioneer Series Trust II, based on net asset value. Each applicant incurred $18,561 in expenses in connection with its reorganization, which were paid by L. Roy Papp & Associates LLP, applicants' investment adviser.

Filing Date: The applications were filed on March 29, 2004.

Applicants' Address: 2201 E. Camelback Rd., Suite 227B, Phoenix, AZ 85016.

Wade Fund, Inc. [File No. 811–556]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant currently has 49 shareholders and will continue to operate in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on February 27, 2004, and amended on April 15, 2004.

Applicant's Address: 5100 Poplar Ave., Suite 2224, Memphis, TN 38137.

Morgan FunShares, Inc. [File No. 811–8244]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 4, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant has retained $4,937 in cash for contingent liabilities and winding-up expenses. Applicant paid $40,704 in expenses incurred in connection with the liquidation.

Filing Dates: The application was filed on March 30, 2004, and amended on April 20, 2004.

Applicant's Address: c/o Robert F. Pincus, Fifth Third Bank, NA, 1404 E. 9th St., 6th Floor, Cleveland, OH 44114.

The Hough Group of Funds [File No. 811–7902]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 27, 2004, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $2,600 incurred in connection with the liquidation were paid by William R. Hough & Co., applicant's investment adviser.

Filing Date: The application was filed on April 7, 2004.

Applicant's Address: 100 Second Ave. S., St. Petersburg, FL 33701.

The Inland Mutual Fund Trust [File No. 811–8958]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By March 31, 2004, all shareholders of applicant had redeemed their shares at net asset value. Expenses of $31,333 incurred in connection with the liquidation were paid by Inland Investment Advisors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on March 17, 2004, and amended on April 23, 2004.

Applicant's Address: 2901 Butterfield Rd., Oak Brook, IL 60523.

DK Investors, Inc. [File No. 811–2886]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 6, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $37,297 incurred in connection with the liquidation were paid by applicant. Applicant intends to continue as a shell company while seeking a party to purchase control and/or merge with applicant. Applicant has retained $135,000 in cash to cover the related anticipated expenses.

Filing Dates: The application was filed on February 9, 2004, and amended on April 7, 2004 and April 27, 2004.

Applicant's Address: 205 Lexington Ave., 16th Floor, New York, NY 10016.

Glenbrook Life Discover Variable Account A [File No. 811–9629]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 12, 2004 the Board of Directors voted to liquidate the applicant. No contracts were ever issued through the applicant. Expenses of $1500 incurred in connection with the liquidation were paid by the depositor, Glenbrook Life and Annuity Company.

Filing Date: The application was filed on April 6, 2004.

Applicant's Address: 3100 Sanders Road, Northbrook, Illinois 60062.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10278 Filed 5–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 10, 2004: Closed meetings will be held on Tuesday, May 11, 2004, at 2:30 p.m. and on Thursday, May 13, 2004, at 1 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), (9)(ii), and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter of the closed meeting scheduled for Tuesday, May 11, 2004, will be: "Institution and settlement of administrative proceedings of an enforcement nature."

The subject matter of the closed meeting scheduled for Thursday, May 13, 2004, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and
An adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if

any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: May 4, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–10501 Filed 5–4–04; 3:49 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49632; File No. SR–EMCC–2004–02]

Self-Regulatory Organizations; The Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Letter of Credit Issuers

April 29, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 2, 2004, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow EMCC to revise Rule 1 to modify the definition of "Approved Letter of Credit Issuer" to remove references to long-term obligations ratings and to conform EMCC's criteria with criteria used by the National Securities Clearing Corporation ("NSCC").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the criteria EMCC uses in approving a letter of credit issuer. Currently, EMCC Rule 1, Approved Letter of Credit Issuer, indicates that to be acceptable an issuer must meet certain rating criteria for its long-term and short-term obligations. In order to be consistent with the criteria used by NSCC, EMCC is modifying its criteria to remove any reference to long-term obligations ratings requirements and to conform its short-term obligations ratings requirements to mirror those of NSCC. Under its revised rule, EMCC will not approve a letter of credit issuer unless, among other requirements, it has and maintains at least $500 million in total shareholders equity and a short-term obligations rating of at least A–2 (by Standard & Poor's Corporation) or P–2 (by Moody's Investors Service, Inc.) and does not have a short-term obligations rating of lower than A–2 or P–2.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(F) of the Act[4] and the rules and regulations thereunder applicable to EMCC because it will standardize the criteria used in approving letter of credit issuers and foster cooperation and coordination amongst entities engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(4)[6] thereunder because the proposed rule change by EMCC does not adversely affect the safeguarding of securities or funds in the custody or control of EMCC or for which it is responsible and does not significantly affect the respective rights or obligations of EMCC or the persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EMCC–2004–02 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–EMCC–2004–02. 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 EMCC. All comments received

[1] 15 U.S.C. 78s(b)(1).

[2] NSCC Rule 4 sets forth criteria for letter of credit issuers.

[3] The Commission has modified the text of the summaries prepared by EMCC.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

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–EMCC–2004–02 and should be submitted on or before May 27, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–10279 Filed 5–5–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 7, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, 202–205–7044.

SUPPLEMENTARY INFORMATION:

Title: Request for Information Concerning Portfolio Financing.

No.: 857.

Frequency: On occasion.

Description of Respondents: Small Business Investment Companies.

Responses: 2,160.

Annual Burden: 2,160.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 04–10303 Filed 5–5–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 7, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Financial Institution Confirmation Form.

No.: 860.

Frequency: On occasion.

Description of Respondents: Small Business Investment Companies.

Responses: 1,500.

Annual Burden: 750.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 04–10304 Filed 5–5–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4702]

Secretary of State's Advisory Committee on Private International Law: General Meeting on International Developments

SUMMARY: A general open meeting of the Advisory Committee will be held in Washington, DC on May 20–21, 2004, at the International Law Institute (ILI) in Georgetown.

Meeting Notice:

The Department of State's Advisory Committee on Private International Law (ACPIL) will hold a general meeting on Thursday and Friday, May 20 and 21, 2004, in Washington, DC at the International Law Institute. The meeting will survey developments in the field and offer an opportunity for members of the public to comment both on those developments and to make recommendations for work that might be undertaken in various international fora.

The agenda tentatively will cover current developments in international bodies that focus on private international law, such as the United Nations Commission on International Trade Law (UNCITRAL), the Hague Conference on Private International Law, the International Institute for Unification of Private Law (UNIDROIT), the Organization of American States and others. Regional developments relevant to private law will also be reviewed, which will cover the European Union, NAFTA, Mercosur, and others, depending on time available.

Particular topics will be discussed, including: The status of negotiations of a multilateral treaty (convention) on choice of forum and its relation to prior efforts to negotiate a convention on recognition and enforcement of judgements, and other international developments on alternate dispute resolution; current negotiations on a convention to unify the law of carriage of goods by sea and inland carriage, with an emphasis on liability and jurisdiction issues; current negotiations on extending secured finance law to outer space commercial activities; international family law developments, including bilateral and multilateral approaches to maintenance and support obligations, and cross-border adoption and abduction; and the impact of cross-border commercial fraud, its effect on developing countries, and its place within the UN system.

The status of several other ongoing activities in this field will also be presented, including a recent Hague Convention and other international

[7] 17 CFR 200.30–3(a)(12).

projects on new harmonized laws for investment securities; the anticipated completion of new standards for business insolvency law reform at UNCITRAL, the World Bank and the International Monetary Fund; a draft Convention on electronic commerce focusing on cross-border contract formation, and related treaty law issues, and implementation of the Cape Town Convention on international financing interests in mobile equipment, including aircraft.

Time and Place: Meetings will be held at the new facilities of the International Law Institute (ILI) at 1055 Jefferson Place, NW., in Georgetown. Meetings will begin at 9:30 a.m. Thursday and Friday and close at 5 p.m. on Thursday and 4 p.m. on Friday. The meeting is open to the public, to the extent seating capacity is available; persons planning to attend should provide their names in advance, with contact numbers, including e-mail addresses, and affiliation(s) if any, to the Office of the Assistant Legal Adviser for Private International Law by e-mail to *ReidCD@state.gov* or by fax to 202–776–8482. Persons who cannot attend but who wish to comment on any of the topics referred to above are welcome to do so.

Documents on these topics are obtainable at *http://www.Uncitral.org; http://www.hccl.net; http://www.Unidroit.org;* and *http://www.oas.org.* For further information on the topics, please contact Jeff Kovar at *KovarJD@State.gov,* Mary Helen Carlson at *CarlsonMH@State.gov,* or Hal Burman at *Halburman@aol.com.* For information on the ILI call Kiril Glavev or Don Wallace, Jr. at 202–247–6006, or email ILI at *Wallace@ili.org* or *K-Glavev@ili.org.* For information on the Advisory Committee contact Hal Burman as noted above or by fax at 202–776–8482.

Dated: April 28, 2004.

Harold S. Burman,

Advisory Committee Executive Director, Department of State.

[FR Doc. 04–10345 Filed 5–5–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Federal Environmental Laws and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects

AGENCY: Office of the Secretary, DOT.

ACTION: Notice listing Federal environmental laws and Executive Orders applicable to the development and review of transportation infrastructure projects.

SUMMARY: Many Federal environmental statutes and Executive Orders establish requirements applicable to the development and review of transportation infrastructure projects that receive financial support from the Department of Transportation (DOT). DOT strives to meet these requirements in a manner that is both expeditious and environmentally sound. The goal of this notice is to contribute to this important effort by providing a brief description of the *primary* statutes and Executive Orders applicable to the development and review of these transportation infrastructure projects.

FOR FURTHER INFORMATION CONTACT: Helen Serassio; U.S. Department of Transportation; 400 7th Street, SW., Room 10102; Washington, DC 20590. Telephone 202–366–1974.

SUPPLEMENTARY INFORMATION: Many Federal environmental statutes and Executive Orders establish requirements applicable to the development and review of transportation infrastructure projects that receive financial support from the Department of Transportation (DOT). DOT strives to meet these requirements in a manner that is both expeditious and environmentally sound. The goal of this document is to contribute to this important effort by providing a brief description of the primary statutes and Executive Orders applicable to the development and review of these transportation infrastructure projects. This summary is not, and should not be relied upon as, an official or independent interpretation or expression of policy on the matters summarized.

DOT includes 10 operating administrations and the Office of the Secretary of Transportation. The following table lists the Department's operating administrations, a citation to their National Environmental Policy Act procedures, and an Internet link or links where more information on environmental procedures may be found.[1] Because this document only presents a brief summary of the main statutes and Executive Orders, readers who want more complete information should contact the relevant operating administration.

Departmental organization	NEPA procedures	Environmental internet links
Federal Highway Administration	23 CFR Parts 771 and 650	*http://www.fhwa.dot.gov/environment/index.htm; http://ecfr.gpoaccess.gov* Title 23, Parts 771 and 650.
Federal Transit Administration	23 CFR Part 771	*http://ecfr.gpoaccess.gov* Title 23, Part 771
Federal Aviation Administration	FAA Order 1050.1D (agency-wide), FAA Order 5050.41 (Airport Environmental Handbook).	*http://www.aee.faa.gov/aee-200/Environment.htm; http://www.faa.gov/arp/environmental.*
Federal Railroad Administration	64 FR 28545	*http://www.fra.dot.gov/Content3.asp?P=25 http://www.gpoaccess.gov/fr/indèx.html 1999, page 28545.*
National Highway Traffic Safety Administration.	49 CFR Part 520	*http://ecfr.gpoaccess.gov* Title 49 Part 520.
Federal Motor Carrier Safety Administration.	FMCSA Order 5610.1	*http://www.gpoaccess.gov/fr/index.html 2004, page 9680; http://dmses.dot.gov/docimages/p78/271575.pdf.*
Bureau of Transportation Statistics	DOT Order 5610.1C	*http://199.79.179.19/OLPFiles/OST/008589.pdf.*
Research and Special Programs Administration.	DOT Order 5610.1C	*http://ops.dot.gov; http://hazmat.dot.gov.*
Maritime Administration	Maritime Administration Order 600.1.	*http://www.marad.dot.gov/programs/env_act.html.*
St. Lawrence Seaway Development Corporation.	SLS Order 10 5610.1C	
Office of the Secretary of Transportation.	DOT Order 5610.1C	*http://199.79.179.19/OLPFiles/OST/008589.pdf.*

[1] Due to the fact that the Coast Guard and Transportation Security Administration have become part of the Department of Homeland Security, they have not been included in this document.

A. Air Quality

Clean Air Act, 42 U.S.C. 7401–7671q. This statute regulates emissions of air pollutants in order to protect human health and the environment. In general, the Clean Air Act delegates responsibility to State and local governments to prevent and control air pollution by requesting States to submit State implementation plans (SIPs) to the Environmental Protection Agency (EPA) for program approval and delegation of implementation responsibilities. SIPs are written plans that States develop to provide for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). If a State fails to create and implement an adequate SIP, EPA creates and implements its own SIP for that State. In 1990, Congress amended the Clean Air Act to include parts that: strengthen measures for attaining air quality standards (Title I); set forth provisions relating to mobile sources (Title II); expand the regulation of hazardous air pollutants (Title III); require substantial reductions in power plant emissions for control of acid rain (Title IV); establish operating permits for all major sources of air pollution (Title V); establish provisions for stratospheric ozone protection (Title VI) and expand enforcement powers and penalties (Title VII). [Source: 42 U.S.C. 7401.] Regulations implementing the Clean Air Act may be found in 40 CFR parts 50–99.

Transportation plans, programs and highway and transit projects must conform to the State's air quality implementation plans that provide for attainment of the NAAQS under regulations at 40 CFR part 51 subpart T. DOT actions other than highway and transit actions must also conform to the SIP under EPA's General Conformity regulation, 40 CFR part 51 subpart W. Conformity requirements apply to actions in nonattainment and maintenance areas.

B. Noise

Section 136(b) of Public Law 91–605, 23 U.S.C. 109(h) & 109(i). Title 23 of the United States Code, sections 109(h) and 109(i), require the Secretary of Transportation to promulgate guidelines to "assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following: (1) Air, noise, and water pollution; * * *" and to "develop and promulgate standards for highway noise levels compatible with different land uses and * * * shall not approve plans and specifications for any proposed project on any Federal-aid system * * * unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards." The FHWA regulations for the mitigation of highway traffic noise in the planning and design of federally aided highways are contained in title 23 of the Code of Federal Regulations part 772. Compliance with the noise regulations is a prerequisite for the granting of Federal-aid highway funds for construction or reconstruction of a highway. [Source: 23 U.S.C. 109(h) & 109(i).]

C. Environmental Justice

Executive Order No. 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-income Populations." This Executive Order establishes a formal Federal policy on environmental justice. The Council on Environmental Quality (CEQ) has oversight of the Federal Government's compliance with EO 12898. CEQ has published a guidance document on environmental justice for Federal agencies. In addition, all Federal agencies were directed under EO 12898 to establish internal directives to ensure that the spirit of the Order is reflected in the full range of their activities. The CEQ's guidance describes how analysis of environmental justice impacts must be integrated within the NEPA framework, including the scoping, public participation, analysis, alternatives and mitigation phases of NEPA analysis. The U.S. Department of Transportation's agency level order establishing procedures for compliance with EO 12898 establishes requirements for integrating environmental justice into the NEPA process through analysis of environmental justice impacts and public involvement, as well as definitions of relevant terms. [Source: Executive Order No. 12898.]

D. Wildlife

1. Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, at Section 1536. The Endangered Species Act (ESA) provides for the protection of species that are at risk of extinction throughout all or a significant portion of their range, and for the protection of ecosystems on which they depend. Generally, the U.S. Fish and Wildlife Service (FWS) coordinates ESA activities for terrestrial and freshwater species, and the National Marine Fisheries Service (NMFS) coordinates ESA activities for marine and anadromous species.

The ESA provides for the listing of plant and animal species that are endangered or threatened. All listing decisions are based solely on the best scientific and commercial data available, and consideration of economic impacts during the listing process is prohibited by the Act. Under section 7 of the ESA, all Federal agencies are required to undertake programs for the conservation of endangered and threatened species. Any Federal action that would jeopardize a listed species or destroy or modify its critical habitat is prohibited. Section 7 activities must be carried out in consultation with FWS or NMFS. [Source: 16 U.S.C 1531.] Requirements for the consultation process are described in 50 CFR part 402.

2. *Executive Order 13112, "Invasive Species."* The purpose of this Executive Order is to prevent the introduction of invasive species into the natural environment and provide for their control and minimize the economic, ecological and human health impacts that invasive species may cause. The Order established an Invasive Species Council to oversee implementation of the Order, oversee Federal agency activities concerning invasive species, develop a National Invasive Species Management Plan and facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, environment and human health. Each Federal agency whose actions may affect the status of invasive species is directed to identify such actions and attempt to prevent the introduction of invasive species and not authorize, fund or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species. [Source: Executive Order 13112.]

3. *Marine Mammal Protection Act, 16 U.S.C. 1361.* This statute establishes a Federal responsibility to conserve marine mammals with management vested in both the Departments of the Interior and Commerce. The Act created a moratorium, with certain exceptions, on the taking of marine mammals in United States waters and by United States citizens on the high seas, and on the importing of marine mammals and marine mammal products into the United States. Native Americans, Aleuts and Eskimos are exempted from the moratorium on taking provided that the taking is conducted for the sake of

subsistence or for the purpose of creating and selling authentic native articles of handicraft and clothing. [Source: 16 U.S.C. 1361.] Applicable regulations: National Oceanic and Atmospheric Administration, Department of Commerce—Civil procedures, 15 CFR Part 904; United States Fish and Wildlife Service, Department of the Interior—General provisions, 50 CFR Part 10; United States Fish and Wildlife Service, Department of the Interior—Marine mammals, 50 CFR Part 18; United States Fish and Wildlife Service, Department of the Interior—Administrative procedures for grants-in-aid (Marine Mammal Protection Act of 1972), 50 CFR Part 82; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Regulations governing the taking and importing of marine mammals, 50 CFR Part 216; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Regulations governing the taking and importing of marine mammals, 50 CFR Part 216; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—General provisions, 50 CFR Part 217; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Endangered fish or wildlife, 50 CFR Part 222; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Authorization for commercial fisheries under Marine Mammal Protection Act of 1972, 50 CFR Part 229; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce—Whaling provisions, 50 CFR Part 230; and, Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations—Transfer of marine mammal management authority to States, 50 CFR Part 403.

4. *Anadromous Fish Conservation Act, 16 U.S.C. 757a–757g.* This statute authorizes the Secretaries of the Interior and Commerce to enter into cooperative agreements with the States and other non-Federal interests for conservation, development and enhancement of anadromous fish, including those in the Great Lakes, and to contribute up to 50 percent as the Federal share of the cost of carrying out such agreements. Authorized are investigations, engineering and biological surveys, research, stream clearance, construction, maintenance, and operations of hatcheries and devices and structures for improving movement, feeding and spawning conditions. Also authorized is construction by the Bureau of Reclamation and the Army Corps of Engineers of water resource projects needed solely for such fish. The Fish and Wildlife Service is authorized to conduct studies and make recommendations to the EPA concerning measures for eliminating or reducing pollution substances detrimental to fish and wildlife in interstate or navigable waters, or their tributaries. [Source 16 U.S.C. 757a–g.] Endangered Species Committee Regulations—Anadromous fisheries conservation, development and enhancement, 50 CFR Part 401.

5. *Fish and Wildlife Conservation Act, 16 U.S.C. 2901–2911.* This statute authorizes financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife. [Source: 16 U.S.C. 2901–2911.] United States Fish and Wildlife Service, Department of the Interior—Rules implementing the Fish and Wildlife Conservation Act of 1980, 50 CFR Part 83.

6. *Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d.* This statute requires consultation with the U.S. Fish and Wildlife Service (FWS) and the appropriate State wildlife agency when a project will impound, divert, channelize, or otherwise control or modify the waters of any stream or other body of water. Generally, if a permit is required under sections 9 or 10 of the River and Harbor Act of 1899, or sections 402 or 404 of the Clean Water Act, the consultation requirement will apply. Permit applications will be forwarded to the FWS, which will review them according to their "Guidelines for the Review of Fish and Wildlife Aspects of Proposals in or Affecting Navigable Waterways," published in the **Federal Register** on December 1, 1975. The FWS issued a mitigation policy in the **Federal Register** on January 23, 1981, that can be consulted when planning mitigation measures. The results of the consultation should be included in the Final EIS or EA. [Sources: 33 U.S.C. 401, 16 U.S.C. 661.]

7. *Executive Order 13186, "Responsibility of Federal Agencies To Protect Migratory Birds."* This Executive Order directs each Federal agency taking actions that have, or are likely to have, a measurable effect on migratory bird populations to develop and implement, within two years, a Memorandum of Understanding with the Fish and Wildlife Service that shall promote the conservation of migratory bird populations. The Department of the Interior was given the task to establish an interagency Council for the Conservation of Migratory Birds to oversee the implementation of the Order. [Source: Executive Order 13186.]

8. *Migratory Bird Treaty Act, 16 U.S.C. 703–712.* The purpose of this statute is to protect the most common wild birds found in the United States by making it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird. Also covered by the Act is the indirect killing of birds by destruction of their nests and eggs. The Fish and Wildlife Service reviews and comments on proposals that could kill birds, even indirectly. [Source: 16 U.S.C. 703.] The Fish and Wildlife Service's implementing regulations are located at 50 CFR part 10, 50 CFR part 14, and 50 CFR part 20.

9. *Nonindigenous Aquatic Nuisance Prevention and Control Act, 16 U.S.C. 4701–4751.* The purpose of this statute is to prevent unintentional introduction and dispersal of nonindigenous species into waters of the United States through ballast water management and other requirements; to coordinate federally conducted, funded or authorized research, prevention control, information dissemination and other activities regarding the zebra mussel and other aquatic nuisance species; to develop and carry out environmentally sound control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange; to understand and minimize economic and ecological impacts of nonindigenous aquatic nuisance species that become established, including the zebra mussel; and to establish a program of research and technology development and assistance to States in the management and removal of zebra mussels. [Source: 16 U.S.C. 4701–4751.] Applicable regulations: Coast Guard's implementing regulations at 33 CFR part 151.

E. Historic and Cultural Resources

1. *Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f.* Section 106 of the National Historic Preservation Act, in general, requires the head of any Federal agency having

jurisdiction over a proposed Federal or federally assisted undertaking, or having authority to license an undertaking, to take into account the effect of the undertaking on any property included in or eligible for inclusion in the National Register of Historic Places. Section 106 also requires the agency head to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertaking. [Source: 16 U.S.C. 470f.] The ACHP's regulations implementing section 106 appear at 36 CFR part 800.

2. *Archeological Resources Protection Act, 16 U.S.C. 470aa–11.* This statute preserves and protects paleontological resources, historic monuments, memorials and antiquities from loss or destruction. The Act applies to archeological resources on federally or Native American-owned property, establishes penalties for looting and vandalizing such archaeological sites and places protection and management responsibilities on Federal agencies having jurisdiction over land on which the resources may be situated. [Source: 16 U.S.C. 470aa–11.] Regulations concerning the Archaeological Resources Protection Act may be found at 43 CFR Part 7, Protection of Archaeological Resources and 43 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections.

3. *Archeological and Historic Preservation Act, 16 U.S.C. 469–469c.* This statute carries out the policy established by the Historic Sites Act and directs Federal agencies to notify the Secretary of the Interior (National Park Service) whenever they find a Federal or federally assisted, licensed, or permitted project may cause loss or destruction of significant scientific, prehistoric or archeological data. The Department of the Interior and/or the Federal agency may undertake a survey or data recovery. [Source: 16 U.S.C. 469–469c.] The Department of the Interior's implementing regulations can be found at 43 CFR part 7.

4. *Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013.* This statute establishes a means for American Indians, Native Hawaiians, and Native Alaskans to request the return of human remains and other cultural items presently held by Federal agencies or federally assisted museums or institutions. The Act also contains provisions regarding the intentional excavation and removal of, inadvertent discovery of, and illegal trafficking in Native American human remains and cultural items. All Federal agencies that manage land and/or are responsible for archaeological collections from their lands or generated by their activities must comply with the Act. [Source: 25 U.S.C. 3001.] The Department of the Interior's regulations implementing NAGPRA may be found at 43 CFR part 10.

5. *Executive Order No. 13007, "Indian Sacred Sites."* This Executive Order requires Federal land managing agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. It also requires agencies to develop procedures for reasonable notification of proposed actions or land management policies that may restrict access to or ceremonial use of, or adversely affect, sacred sites. [Source: Executive Order 13007.]

F. Social and Economic Impacts

1. *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 U.S.C. 4601–4655.* This statute establishes a policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs. If land is to be acquired for a Federal or federally assisted program, the program's environmental documentation should contain a description of the land to be acquired. In cases where an acquisition requires the displacement of businesses or individuals, there is a social impact that must be analyzed as part of the environmental documentation process. [Source: 42 U.S.C. 4601.] Federal regulations implementing the Uniform Act are contained in 49 CFR part 24.

2. *Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks."* This Executive Order directs each agency to "ensure that its policies, programs, activities, and standards address disproportionate risks to children * * *" Also, for each regulatory action subject to the Order, agencies must conduct "an evaluation of the environmental health or safety effects of the planned regulation on children" and include "an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency." These findings are to be submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review. In addition, the Order created a task force, co-chaired by the Secretary of Health and Human Services and the EPA Administrator, to make recommendations to the President on Federal strategies for children's environmental health and safety. [Source: Executive Order 13045.]

3. *Executive Order No. 13175, "Consultation and Coordination With Indian Tribal Governments."* This Executive Order establishes regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities. Each agency is responsible for establishing a process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. [Source: Executive Order No. 13175.]

4. *American Indian Religious Freedom Act, 42 U.S.C. 1996.* This statute protects and preserves places of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, including access to sites, use and possession of sacred objects and the freedom to worship through ceremonials and traditional rites. This Act applies to all projects that affect places of religious importance to Native Americans. [Source 42 U.S.C. 1996.] Applicable regulations: Forest Service, Department of Agriculture—Protection of archaeological resources: Uniform regulations, 36 CFR Part 296; Office of the Secretary of the Interior—Protection of archaeological resources: Uniform regulations, 43 CFR Part 7; and, United States Fish and Wildlife Service, Department of the Interior—Seizure and forfeiture procedures, 50 CFR Part 12.

5. *Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209.* This statute minimizes the impact Federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. Federal programs are to be administered to be compatible with State, local units of government, and private programs and policies to protect farmland. Federal agencies are required to develop and review their policies and procedures to implement the FPPA. The FPPA does not authorize the Federal Government to regulate the use of private or nonfederal land. Projects are subject to FPPA if they may irreversibly convert farmland directly or indirectly to nonagricultural use and are completed by a Federal agency or with assistance from a Federal agency. [Source: 7 U.S.C. 4201–4209.] Implementing regulations by the Department of Agriculture, Natural Resources Conservation Service are found at 7 CFR part 658.

G. Water Resources and Wetlands

1. *Clean Water Act, 33 U.S.C. 1251–1377.* This statute establishes the basic structure for regulating discharges of pollutants into the waters of the United States. It gives the EPA the authority to implement pollution control programs, such as setting wastewater standards for industry. The Clean Water Act also contains requirements to set water quality standards for all contaminants in surface waters. The Act makes it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit is obtained. The Act also funds construction of sewage treatment plants under the construction grants program. Section 401 requires water quality certification from the applicable State Water Resource Agency. Section 319 requires that all projects be consistent with State Non-Point Source Pollution Management programs. Section 404, as discussed below, requires the applicant obtain a permit for dredge or fill material from the U.S. Army Corps of Engineers or State agency, as appropriate. Section 402 requires that permits for all other discharges are to be acquired from the EPA or appropriate State agency. [Source: 33 U.S.C. 1251–1376.] Applicable regulations may be found at 23 CFR part 650 subpart B, 33 CFR parts 209, 320–323, 325, 328, 329, and 40 CFR parts 121–125, 129–131, 133, 135–136, 230–231.

2. *Section 404 of the Clean Water Act, 33 U.S.C. 1344.* This section authorizes the U.S. Army Corps of Engineers (USACE) to regulate discharges of dredged or fill material into waters of the United States, including wetland areas. This authority encompasses fill that occurs as a result of infrastructure development, such as a light rail line or a bus terminal. In issuing permits, the Corps of Engineers must apply guidelines developed by the Administrator of the Environmental Protection Agency, and EPA may prohibit fill or disposal at a site or area. [Source: 33 U.S.C. 1344.] Regulations outlining USACE's authority and general policies for implementing the program are found at 33 CFR part 320 and 40 CFR part 230.

3. *Coastal Barrier Resources Act, 16 U.S.C. 3501–3510.* This statute designates a protected network of undeveloped coastal barriers located on the Atlantic and Gulf Coasts called the Coastal Barrier Resources System. Section 5 of this Act prohibits Federal expenditures for construction of any facilities, structures, roads, bridges, airports, *etc.*, within the System. Exceptions can be made for some activities such as the maintenance of existing channel improvements and related structures, and the maintenance, replacement, reconstruction, or repair (not expansion) of publicly-operated roads or facilities which are essential links in a larger network or system. Consultation with the U.S. Department of the Interior is required. When a proposed project impacts a coastal barrier unit, the Draft Environmental Impact Statement (EIS) should:

- Include a map showing the relationship of each alternative to the unit(s);
- Identify direct and indirect impacts to the unit(s), qualifying and describing the impacts as appropriate;
- Discuss the results of early coordination with the Fish and Wildlife Service, identifying any issues raised and how they were addressed;
- Identify any alternative which (if selected) would require an exception under the Act.

Any issues identified or exceptions required for the preferred alternative should be resolved prior to its selection. This resolution is documented in the final EIS. [Source: 16 U.S.C. 3501.]

4. *Coastal Zone Management Act, 16 U.S.C. 1451–1465.* This statute established a voluntary program in which, of the 35 States with coastal zones, 28 States are currently participating. These States have Department of Commerce approved State plans and receive Federal money and technical assistance to administer their programs. If a transportation project will directly affect the coastal zone of any State with an approved Coastal Zone Management (CZM) Program, the environmental document must show whether the project will be consistent with the CZM Plan. The State agency managing the program, called the principal 306 agency, is usually the State Department of Natural Resources or equivalent agency. This agency should be consulted for procedures that are used to determine consistency with the CZM Plan and its opinion on whether the proposed project is consistent with the State's program. The environmental document should present the applicant's certification that the project is (or is not) consistent with the CZM program and the views of the State agency. [Source: 16 U.S.C. 1451.]

5. *Land and Water Conservation Fund (LWCF), 16 U.S.C. 460l–4.* This statute provides money to Federal, State and local governments to purchase land, water and wetlands for the benefit of the public. Lands and waters purchased through the LWCF are used to:

- Provide recreational opportunities
- Provide clean water
- Preserve wildlife habitat
- Enhance scenic vistas
- Protect archaeological and historical sites
- Maintain the pristine nature of wilderness areas

Land is bought from landowners at fair-market value (unless the owner chooses to offer the land as a donation or at a reduced price). The Fund receives money mostly from fees paid by companies drilling offshore for oil and gas. Other funding sources include the sale of surplus Federal real estate and taxes on motorboat fuel. Section 6(f) of the Act contains provisions to protect Federal investments and the quality of assisted resources. It discourages the casual loss of park and recreation facilities by ensuring changes or conversions from recreation use will bear a cost. The "anti-conversion" requirement applies to all parks and other sites that have been the subject of Land and Water grants of any type. [Source 16 U.S.C. 460*l*–4.] Implementing regulations: Forest Service, Department of Agriculture—Occupancy and use of developed sites and areas of concentrated public use, 36 CFR part 291.

6. *Rivers and Harbors Act of 1899, 33 U.S.C. 403.* This statute provides for the protection of navigable waters in the United States by prohibiting the construction of any bridge, dam, dike or causeway over or in navigable waterways of the United States without Congressional approval. Administration of section 9 has been delegated to the Coast Guard. Structures authorized by the State legislatures may be built if the affected navigable waters are totally within one State, provided that the Chief of Engineers and the Secretary of the Army approve the plan. Under section 10 of the Act, the building of any wharfs, piers, jetties, and other structures is prohibited without Congressional approval, and excavation or fill within navigable waters requires the approval of the Chief of Engineers. [Sources: 33 U.S.C. 401, 33 U.S.C. 403.] Applicable regulations: Administrative procedure with respect to the Corps of Engineers, 33 CFR Part 209; Permits for structures or work in or affecting navigable waters of United States, 33 CFR Part 322; Corps of Engineers nationwide permit program, 33 CFR Part 330.

7. *Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6.* This statute seeks to ensure public health and welfare through safe drinking water. The SDWA applies to all public drinking water systems and reservoirs and actions that may have a significant impact on an aquifer or wellhead

protection area that is the sole or principal drinking water. The 1996 amendments require States to develop and implement Source Water Assessment Programs to analyze existing and potential threats to the quality of the public drinking water throughout the State. [Source: 42 U.S.C. 300f–300j–6.] The EPA regulations on SDWA: National primary drinking water regulations, 40 CFR Part 141, and National primary drinking water regulations implementation, 40 CFR Part 142.

8. *Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287.* This statute preserves and protects wild and scenic rivers and immediate environs for the benefit of present and future generations. All streams and their adjacent land areas which are included in the National Wild and Scenic Rivers System are classified and designated in the following categories: wild river areas, scenic river areas, or recreational river areas. Project proposals and reports that may have a direct and adverse effect on designated and potential rivers must be coordinated with the appropriate Federal agency, either the Department of the Interior or Agriculture. [Source: 16 U.S.C. 1271–1287.] Applicable regulations: Department of Agriculture—Forest Service, 36 CFR Part 297; Department of the Interior—National Park Service, 43 CFR Part 8350.

9. *Executive Order No. 11990, "Protection of Wetlands."* This Executive Order was created to avoid the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. The Order directs Federal agencies to avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harms to wetlands that may result from such use. In making this finding, the agency may take into account economic, environmental and other pertinent factors. [Source: Executive Order No. 11990.] Preservation of the Nation's Wetlands, U.S. DOT Order 5660.1A, sets forth the U.S. Department of Transportation policy for interpreting Executive Order 11990. The Order requires that transportation facilities and projects should be planned, constructed, and operated to assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable, and establishes procedures for implementation of the policy. [Source: U.S. DOT Order 5660.1A.]

10. *Executive Order No. 11988, "Floodplain Management."* This Executive Order emphasizes the importance of floodplains and directs Federal agencies to avoid conducting, allowing or supporting actions on a floodplain. When contemplating transportation projects, maps of the Federal Insurance Administration should be consulted to determine if the proposed project site is located within the 100-year floodplain. Flood Insurance Rate Maps (FIRMs) are available for review at local zoning or planning commission offices. If the proposed project is located within a floodplain, a detailed analysis should be included in the environmental document, as specified in U.S. Department of Transportation Order 5650.2, "Floodplain Management and Protection." The analysis should discuss any risk to, or resulting from, the action, the impacts on natural and beneficial floodplain values, the degree to which the action provides direct or indirect support for development in the floodplain and measures to minimize harm or to restore or preserve the natural and beneficial floodplain values affected by the project. [Sources: Executive Order No. 11988 and U.S. Department of Transportation Order 5650.2.]

11. *Emergency Wetlands Resources Act, 16. U.S.C. 3921, 3931.* This statute promotes the conservation of wetlands in the United States in order to maintain the public benefits they provide. The statute requires the preparation of a national wetlands priority conservation plan that provides priority with respect to Federal and State acquisition and also provides direction for the national wetlands inventory. This statute also authorized the purchase of wetlands from Land and Water Conservation Fund monies. It required the Secretary of the Interior to establish a National Wetlands Priority Conservation Plan, required the States to include wetlands in their Comprehensive Outdoor Recreation Plans, and transferred to the Migratory Bird Conservation Fund amounts equal to the import duties on arms and ammunition.

The Act also required the Secretary of the Interior to report to Congress on wetlands loss, including an analysis of the role of Federal programs and policies in inducing such losses. In addition, it directed the Secretary of the Interior, through the Fish and Wildlife Service, to continue the National Wetlands Inventory; to complete by September 30, 1998, mapping of the contiguous United States; to produce, as soon as practicable, maps of Alaska and other noncontiguous portions of the United States; and to produce, by September 30, 1990, and at ten-year intervals thereafter, reports to update the September 1982 "Status and Trends of Wetlands and Deepwater Habitat in the Coterminous United States, 1950's to 1970's." The Fish and Wildlife Service coordinates this statute. [Source: 16. U.S.C. 3921, 3931.]

12. *Transportation Equity Act for the 21st Century: Wetlands Mitigation. 23 U.S.C. 103(b)(6)(m), 133(b)(11).* Mitigation of wetlands impacts related to projects funded through the National Highway System (NHS) and Surface Transportation Program (STP) is eligible for program funds, including participation in wetland mitigation banks; restoration, enhancement and creation of wetlands; and contributions to statewide and regional plans, including banks authorized under the Water Resources Development Act . For projects funded through NHS or STP, it applies to federally undertaken, financed, or assisted construction and improvements, or such projects with impacts on wetlands. Participants must evaluate and mitigate impacts on wetlands and a specific finding regarding wetlands is required in the final environmental document. TEA–21 established a preference for mitigation banking to compensate for unavoidable losses to wetlands and other natural habitat caused by transportation projects funded under title 23. [Sources: 23 U.S.C. 103(b)(6)(m), 133(b)(11).] Implementing guidance: Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605; Nov. 28, 1995) and Guidance on the Use of the TEA–21 Preference for Mitigation Banking, July 11, 2003.

13. *Flood Disaster Protection Act, 42 U.S.C. 4001–4128.* The Act requires any federally assisted acquisition or construction project to avoid, or the design to be consistent with, flood-hazard areas identified by the Federal Emergency Management Agency (FEMA). The Act mandates flood insurance for all federally backed mortgages and mortgages and loans obtained through federally insured and regulated financial institutions. In addition, disaster assistance grants (public assistance) are not available to local governments not participating in the program. [Source: 42 U.S.C. 4001–4128.] Applicable regulations 23 CFR 771, 44 CFR parts 59–62, 64–68, 70–71, 75–77.

14. *Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401–1445.* The purpose of this statute is to prevent

"unregulated dumping of material into the oceans, coastal, and other waters" that endanger "human health, welfare, and amenities, and the marine environment, ecological systems and economic potentialities." Moreover, the transportation and dumping of radioactive, chemical, or biological substances is forbidden. This Act also includes Title III, known as the National Marine Sanctuaries Act, which charged the Secretary of Commerce to identify, designate, and manage marine sites based on conservational, ecological, recreational, historical, aesthetic, scientific or educational value within significant national ocean and Great Lakes waters. [Source: 33 U.S.C. §§ 1401–1445.] Applicable regulations are found at 33 CFR parts 320 and 330 and 40 CFR parts 220–225, 227–228, and 230–231.

15. *Water Bank Act, 16 U.S.C. 1301–1311.* The Water Bank Act's purpose is to preserve, restore and improve wetlands of the Nation. This Act applies to any agreements with landowners and operators in important migratory waterfowl nesting and breeding areas. The Act authorized the Secretary of Agriculture, after coordination with the Secretary of the Interior, to enter into 10-year contracts with landowners to preserve wetlands and retire adjoining agricultural lands and directs the Secretary of Agriculture to reexamine payment rates every 5 years after 1980. The amount to be expended in any one State in any calendar year is limited to not more than 15 percent of the funds appropriated. [Source: 16 U.S.C. 1301–1311.] The Department of Agriculture's implementing regulations are found at 7 CFR part 752.

16. *Act to Prevent Pollution From Ships, 33 U.S.C. 1901–1911.* This statute requires ships in U.S. waters, and U.S. ships wherever located, to comply with the International Convention for the Prevention of Pollution from Ships. Annex V to the Convention generally proscribes the disposal of plastics and other garbage in the sea. The Antarctic Science, Tourism and Conservation Act of 1996 amended the Act to require that ships also comply with Annex IV of the Protocol on Environmental Protection to the Antarctic Treaty. [Source: 33 U.S.C. 1901–1911.] Implementing regulations: Coast Guard, Oil pollution prevention regulations for vessels, 33 CFR part 155; Rules for the protection of the marine environment relating to tank vessels carrying oil in bulk, 33 CFR part 157; Reception facilities for oil, noxious liquid substances and garbage, 33 CFR part 158; Ports and waterways safety; Inland waterways navigation regulations, 33 CFR part 162; Vessel inspections, 46 CFR part 2; Barges carrying bulk liquid hazardous materials cargo, 46 CFR 151; and, Ships carrying bulk liquid, liquefied gas, or compressed gas hazardous materials, 46 CFR part 153.

17. *The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701–2761; 46 U.S.C. 3703(a).* The OPA requires oil storage facilities and vessels to submit to the Federal government plans detailing how they will respond to large discharges. The OPA also requires the development of Area Contingency Plans to prepare and plan for oil spill responses on a regional basis. EPA has published regulations for aboveground storage facilities and the Coast Guard has done so for oil tankers. [Sources: 33 U.S.C. 2701–2761; 46 U.S.C. 3703(a)]. Implementing regulations are found at 15 CFR part 990, 33 CFR part 135 and 49 CFR part 194.

H. Parklands

Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303(b)–303(c). Title 49 of the United States Code, section 303(b), requires the Secretary of Transportation to cooperate and consult with the Secretaries of Interior, Housing and Urban Development, and Agriculture, along with the States in developing plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities. Section 303(c) in general provides that the Secretary may not approve a transportation program or project requiring the use of a public park, recreation area, wildlife refuge, or significant historic site unless there is no prudent or feasible alternative and the program or project includes all possible planning to minimize harm to the property. [Source: 49 U.S.C. 303(b)–303(c).] Implementing regulations: Federal Highway Administration—Environmental impact and related procedures, 23 CFR part 771.

I. Hazardous Materials

1. *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675.* The CERCLA was created to provide for liability, compensation, cleanup and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal sites. As explained below, the Superfund Amendments and Reauthorization Act (SARA) amended CERCLA in 1986. CERCLA applies to any project that may deal with land containing a hazardous substance. [Source: 49 U.S.C. 9601.] 40 CFR part 300 provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants. 43 CFR part 11 supplements the procedures established under 40 CFR part 300 for the identification, investigation, study, and response to a discharge of oil or release of a hazardous substance, and it provides a procedure by which a natural resource trustee can determine compensation for injuries to natural resources that have not been nor are expected to be addressed by response actions conducted pursuant to the National Contingency Plan.

2. *Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99–499, 100 STAT. 1613–1781 (codified in CERCLA "42 U.S.C. 9671–9675).* This statute amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1986. The amendments include: stressing the importance of permanent remedies and innovative treatment technologies in cleaning up hazardous waste sites; requiring Superfund actions to consider the standards and requirements found in other State and Federal environmental laws and regulations; providing new enforcement authorities and settlement tools; increasing State involvement in every phase of the Superfund program; increasing the focus on human health problems posed by hazardous waste sites; encouraging greater citizen participation in making decisions on how sites should be cleaned up; and increasing the size of the trust fund to $8.5 billion. SARA also required EPA to revise the Hazard Ranking System to ensure that it accurately assessed the relative degree of risk to human health and the environment posed by uncontrolled hazardous waste sites that may be placed on the National Priorities List. [Source: Pub. L. 99–499.]

3. *Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k.* This statute regulates the generation, treatment, storage, transportation and disposal of solid hazardous waste. RCRA also sets forth a framework for the management of non-hazardous wastes. RCRA focuses only on active and future facilities and does not address abandoned or historical sites. Subtitle I establishes a regulatory program that prevents, detects and cleans up releases from underground storage tank systems containing petroleum or hazardous substances. [Source: 42 U.S.C. 6901.] 40 CFR parts 260–271 establishes the standards and

procedures the EPA uses in implementing RCRA.

4. *Toxic Substances Control Act, 15 U.S.C. 2601.* This statute empowers the EPA to track the industrial chemicals currently produced or imported into the United States. EPA can require the reporting or testing of those chemicals that it deems may pose an environmental or human-health hazard. EPA can also ban the manufacture and import of those chemicals that pose an unreasonable risk. [Source: 15 U.S.C. 2601.] EPA's implementing regulations: Procedures governing testing consent agreements and test rules, 40 CFR parts, 790–792; Provisional test guidelines, 40 CFR part 795; Chemical fate testing guidelines, 40 CFR part 796; Environmental effects testing guidelines, 40 CFR part 797; Health effects testing guidelines, 40 CFR part 798; and, Identification of specific chemical substance and mixture testing requirements, 40 CFR part 799.

5. *Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136a–136y.* FIFRA controls the application of pesticides to provide greater protection to people and the environment. The primary focus of FIFRA is to provide Federal control of pesticide distribution, sale, and use. EPA is given authority under FIFRA not only to study the consequences of pesticide usage but also to require users (farmers, utility companies, and others) to register when purchasing pesticides. Through later amendments to the law, users also must take exams for certification as applicators of pesticides. All pesticides used in the U.S. must be registered (licensed) by EPA. Registration assures that pesticides will be properly labeled and that if in accordance with specifications, will not cause unreasonable harm to the environment. [Source: 7 U.S.C. 136.] The EPA's implementing regulations are found at 40 CFR parts 152–171.

6. *The Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. 11001–11050.* The EPCRA was enacted by Congress as the national legislation on community safety. EPCRA establishes requirements for Federal, State and local governments, Indian Tribes and industry regarding emergency planning and "Community Right-To-Know" reporting on hazardous and toxic chemicals. The purpose of the Community Right-To-Know provisions is to increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. There are four major provisions to EPCRA: emergency planning (sections 301–303), emergency release notification (section 304), hazardous chemical storage reporting requirements (sections 311–312), and toxic chemical release inventory (section 313). [Source: 42 U.S.C. 1101–11050]. Implementing regulations are located at: 40 CFR parts 355 and 370.

J. Federal Procedures

1. *National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4335.* This statute established a national policy for protection of the environment. The statute includes three major purposes: (1) It sets national environmental policy; (2) it establishes a basis for environmental impact statements (EIS); and (3) it created the Council on Environmental Quality (CEQ). NEPA requires that, to the extent possible, the policies, regulations, and laws of the Federal Government be interpreted and administered in accordance with the protection goals of the law. It also requires Federal agencies to use an interdisciplinary approach in planning and decision making for actions that impact the environment. Finally, NEPA requires the preparation of an EIS on all major Federal actions significantly affecting the quality of the human environment. [Source: 42 U.S.C. 4231–4335.] The Council on Environmental Quality (CEQ) issued regulations for implementing the procedural aspects of NEPA (40 CFR parts 1500–1508). Shortly following the regulations CEQ issued guidance, commonly referred to as "Forty Questions and Answers on the CEQ Regulations". Other applicable regulations and Executive Orders are 23 CFR parts 771–772 and Executive Order 11514 as amended by Executive Order 11991 on NEPA responsibilities. The Department's procedures for compliance with the NEPA and other environmental requirements are in Order DOT 5610.1C, Procedures for Considering Environmental Impacts. Most of the Department's operating administrations also have their own specific procedures. The Departmental order can be found at *http://199.79.179.19/OLPFiles/OST/008589.tif* or *http://199.79.179.19/OLPFiles/OST/008589.pdf.*

2. *Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109.* This statute focuses industry, government and public attention on reducing the amount of pollution through cost-effective changes in production, operation and raw materials use. The Act promotes using practices that increase efficiency in the use of energy, water, or other natural resources and protect the resource base through conservation, including recycling, source reduction and sustainable agriculture. The Act also created pollution prevention State grants to be awarded to promote the use of source reduction techniques by businesses. [Source: 42 U.S.C. 13101.] Applicable regulations are found at 40 CFR 35.340, 48 CFR 23.702 and 48 CFR 52.223–5.

3. *49 U.S.C. 47101.* This statute establishes the National Transportation Policy, stating that it is the goal of the United States to develop a national intermodal transportation system and that all forms of transportation will be full partners in the effort to reduce energy consumption and air pollution while promoting economic development. This statute also notes that it is in the public interest to reduce noncompatible land uses around airports and place a priority on efforts to mitigate noise around airports. The statute directs the Department of Transportation (DOT) to cooperate with State and local officials in developing airport plans and programs that are based on overall transportation needs and that such programs shall be developed considering long-range land-use plans and overall social, economic, environmental, system performance and energy conservation objectives. Finally, the statute directs DOT to consult with the Secretary of the Interior and the Administrator of the EPA about any project included in a project grant application involving the location of an airport or runway, or a major runway extension that may have a significant effect on natural resources or the environment. [Source: 49 U.S.C. 47101.] Implementing regulations: Federal Aviation Administration—Airport noise compatibility planning, 14 CFR Part 150.

4. *Executive Order 13148, "Greening of Government Through Leadership in Environmental Management."* Under this Order, the head of each Federal agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decision-making and long-term planning processes, across all agency missions, activities, and functions. Consequently, environmental management considerations become a fundamental and integral component of Federal Government policies, operations planning and management. The Order has the following goals: environmental management; environmental compliance; right-to-know and pollution prevention; release reduction of toxic chemicals; use reduction of toxic chemicals, hazardous substances and other pollutants; reductions in ozone-depleting substances; and, environmentally and economically

beneficial landscaping. [Source: Executive Order 13148.]

5. *Executive Order No. 13274, "Environmental Stewardship and Transportation Infrastructure Project Reviews."* This Executive Order was issued to enhance environmental stewardship and streamline environmental review of transportation infrastructure projects. The Executive Order establishes an interagency Transportation Infrastructure Streamlining Task Force to promote streamlining and environmental stewardship in transportation projects. [Source: Executive Order No. 13274.]

6. *Executive Order 11593, "Protection and Enhancement of the Cultural Environment."* This Executive Order tasks Federal agencies to survey all lands under their ownership or control and nominate to the National Register of Historic Places all properties that appear to qualify. It also requires agencies not to inadvertently destroy such properties prior to completing their inventories. This Order was codified as part of the 1980 amendments to the National Historic Preservation Act. [Sources: Executive Order 11593, National Historic Preservation Act 16 U.S.C. 470.]

7. *The Federal Facilities Compliance Act of 1992 (FFCA), Public Law 102–386 (106 Stat. 1505).* The FFCA amended the Solid Waste Disposal Act by making all Federal agencies subject to all substantive and procedural requirements of Federal, State and local solid and hazardous waste laws in the same manner as any private party, waiving sovereign immunity of the United States in all such cases. Moreover, while employees, officers, and agents of the United States may not be liable for civil penalties under any such law for actions committed within the scope of that person's official duties, such persons may be liable for criminal penalties. The Administrator of the EPA is authorized to commence an administrative enforcement action against any Federal agency or department in the same manner as against a private party. Finally, agencies must reimburse the EPA for the required annual inspections of agency hazardous waste facilities, and for EPA to conduct a comprehensive ground water monitoring evaluation at the first inspection of each site conducted after October 6, 1992. [Source: Pub. L. 102–386 (106 Stat. 1505).] The EPA implementing regulation may be found at 40 CFR 22.37.

8. *Executive Order 13287, "Preserve America."* This Order was issued to provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government, and promote intergovernmental cooperation and partnership for the preservation and use of historic properties. The Order directs Federal agencies to increase their knowledge of historic resources in their care and to enhance the management of these assets. The Order further encourages agencies to seek partnerships with State, tribal, and local governments and the private sector to make more efficient and informed use of their resources for economic development and other recognized public benefits. Finally, the Order directs agencies to assist in the development of local and regional nature tourism programs using the historic resources that are a significant feature of many State and local economies. [Source: Executive Order 13287.]

K. Land

1. *Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.* The Landscaping and Scenic Enhancement Act empowers the Secretary of Transportation to approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public, and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways. Section 130 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 amended 23 U.S.C. 319 by adding a requirement that native wildflower seeds or seedlings or both be planted as part of any landscaping project undertaken on the Federal-aid highway system. At least one-quarter of one percent of funds expended for a landscaping project must be used to plant native wildflowers on that project. This provision requires every landscaping project to include the planting of native wildflowers unless a waiver has been granted. [Source: 23 U.S.C. 319.] Implementing regulations may be found at 23 CFR parts 650, 655, 662, and 752.

2. *Highway Beautification Act, 23 U.S.C., 131, 136, and 319.* The Highway Beautification Act's purpose is to provide effective control of outdoor advertising and junkyards, to protect the public investment, to promote the safety and recreational values of public travel and to preserve natural beauty. The Act also provides landscapes and roadside development reasonably necessary to accommodate the traveling public. This Act applies to interstate and primary systems, as the primary system existed on June 1, 1991, and the National Highway System. [Sources: 23 U.S.C. 131, 136, and 319.] Implementing regulations may be found at 23 CFR parts 750–752.

3. *National Trails System Act, 16 U.S.C. 1241–1249.* The National Trails System Act made it Federal policy to recognize and promote trails by providing financial assistance, support of volunteers and coordination with States. As a result, 8 national scenic trails (NSTs) and 15 national historic trails (NHTs) have been established by law (and are administered by the National Park Service, the USDA Forest Service, and the Bureau of Land Management, depending on the trail); over 800 national recreation trails have been recognized by the Secretaries of Agriculture and the Interior; and 2 side-and-connecting trails have also been certified. In addition, other Federal statutes support and fund trails through programs such as FHWA's Recreational Trails Program and Transportation Enhancements programs, HUD block grants, and the NPS Rivers, Trails, and Conservation Assistance Program. [Sources: 16 U.S.C. 1241–1249.] Implementing regulations are found at 36 CFR part 251 and 43 CFR part 8350. *See also* the National Recreational Trails Fund of the Intermodal Surface Transportation Efficiency Act of 1991, 16 U.S.C. 1261, which established the program to allocate funds to States to provide and maintain recreational trail and trail-related projects.

Issued in Washington, DC, on April 16, 2004.

Emil H. Frankel,

Assistant Secretary for Transportation Policy.

[FR Doc. 04–10308 Filed 5–5–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et. seq.*, permits the Administrator of the Federal Transit Administration

(FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Metropolitan Council intends to transfer a parcel of property to the City of Minneapolis for the Public Housing Agency to build five public housing units. Metropolitan Council currently owns the land. The property consists of approximately 18,144 square feet of land. The property is paved with no structures on it and is located in a residential area of Minneapolis, MN.

EFFECTIVE DATE: Any Federal agency interested in acquiring the facility must notify the FTA Regional V Office of its interest by June 7, 2004.

ADDRESSES: Interested parties should notify the Regional Office by writing to Joel P. Ettinger, Regional Administrator, Federal Transit Administration, 200 West Adams, Suite 320, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Donald Gismondi, Deputy Regional Administrator at 312/353–2789.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(g)(1)

Determinations:

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected facilities should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Facility

The property is approximately 18,144 square feet of land. The property is paved with no structures on it. The property is currently being used for parking by area businesses. The property is subject to a covenant running with the land that the property owner will not discriminate against any person on account of race, color or national origin in connection with the use, sale or transfer of the land. The property is located in a residential area of Minneapolis, MN. The street address is: 3824 West 44th Street, Minneapolis, MN.

Issued on: April 26, 2004.

Donald Gismondi,

Deputy Regional Administrator.

[FR Doc. 04–10357 Filed 5–5–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17672]

Notice of Receipt of Petition for Decision that Nonconforming 2003 Audi RS6 and RS6 Avant Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 Audi RS6 and RS6 Avant passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 Audi RS6 and RS6 Avant passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 7, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. 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.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Webautoworld of Pompano Beach, Florida (Registered Importer 02–295) has petitioned NHTSA to decide whether 2003 Audi RS6 and RS6 Avant passenger cars are eligible for importation into the United States. The vehicles that WEBAUTOWORLD believes are substantially similar are 2003 Audi RS6 and S6 Avant passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it compared non-U.S. certified 2003 Audi RS6 and RS6 Avant passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WEBAUTOWORLD submitted information with its petition intended to demonstrate that non-U.S. certified 2003 Audi RS6 and RS6 Avant passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003 Audi RS6 and RS6 Avant passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power-Operated Window Partition,* and *Roof Panel Systems,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner indicates that the vehicles are not on the list of vehicles subject to the requirements of the Theft Prevention Standard found in 49 CFR Part 541.

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "brake" on the instrument cluster in place of the international ECE warning symbol on vehicles that are not already so equipped; (b) modification of the speedometer to read in miles per hour by loading U.S. version information into the vehicle computer.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of the following components on vehicles that are not already so equipped: (a) U.S.-model headlamp assemblies that include front sidemarker lamps and front side reflex reflectors; (b) U.S.-model taillamp assemblies that include rear sidemarker lamps and rear side reflex reflectors; (c) U.S.-model high-mounted stop lamp assembly.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component, or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection:* Modification by reprogramming the vehicle's computers to the U.S.-mode to ensure compliance with the standard.

Standard No. 208 *Occupant Crash Protection:*

(a) Modification by reprogramming the vehicle's computers to the U.S.-mode to activate the seatbelt warning buzzer and lamp; (b) installation of U.S.-model seatbelt buckle assemblies to ensure that the seatbelt warning system complies with the standard. The petitioner states that the vehicles are equipped with dual front air bags, and with combination lap and shoulder belts at the front and rear outboard seating positions that are self-tensioning and that release by means of a single red push button.

Standard No. 401 *Interior Trunk Release:* Installation of U.S.-model components to ensure compliance with the standard.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 30, 2004.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–10358 Filed 5–5–04; 8:45 am]

BILLING CODE 4910–59–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 altered Privacy Act System of Records.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), gives notice of a proposed alteration to the system of records entitled "Treasury/FMS .016—Payment Records for Other Than Regular Recurring Benefit Payments," which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The systems of records notice was last published in the **Federal Register** in its entirety on August 22, 2001, in 66 FR 44204. Two amendments to Treasury/FMS .016 have been published on February 26, 2003, at 68 FR 8964, and April 1, 2003, at 68 FR 15796, respectively.

DATES: Comments must be received no later than June 7, 2004. The proposed systems of records will be effective June 15, 2004 unless FMS receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to ASAP Program Manager, Federal Finance, Financial Management Service, 401 14th Street, SW., Washington, DC 20227, or by electronic mail to *christopher.tighe@fms.treas.gov.* 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.

FOR FURTHER INFORMATION CONTACT: Christopher Tighe, Federal Finance, (202) 874–6644.

SUPPLEMENTARY INFORMATION: The Financial Management Service (FMS) is the money manager for the Federal Government. As such, FMS disburses over 900 million payments totaling more than $1.64 trillion in social security and veterans' benefits, income tax refunds, and other federal payments. In the operation of its payment programs, FMS maintains records on individuals who receive payments from the Federal Government. Some records on individuals who receive Federal payments are maintained in FMS's "Payment Records for Other Than Regular Recurring Benefit Payments—Treasury/FMS .016."

As part of its continuing efforts to efficiently operate and manage its payment disbursement processes, FMS establishes new payment delivery mechanisms. This alteration of system of records Treasury/FMS .016 is being made to add information specific to payment records related to the Automated Standard Application for Payments (ASAP.gov) payment mechanism. This alteration updates system location, storage, retention and disposal, system managers, and record source categories.

ASAP.gov is an FMS Internet payment mechanism that assists Federal agencies in disbursing monies to states, municipalities, nonprofit entities, universities and individuals. Payments can include unemployment insurance and Medicare payments to states; federally funded research grants and student loan payments to universities; and individual research grant payments to nonprofit entities and individuals. By using ASAP.gov, Federal entities authorize funding for electronic payments to end-recipients. An electronic payment is initiated when a payment requestor, acting on behalf of the end-recipient, requests a specific payment amount. When the payment request is initiated, ASAP debits the Federal entity's Treasury account and sends a credit through either the Automated Clearing House (ACH), a future date settlement funds transfer system, or the Federal Reserve Bank funds transfer system (Fedwire), a same date settlement funds transfer system, to the payment requestor's bank account, resulting in a payment. ASAP.gov will allow states, municipalities, nonprofit entities, universities and individuals to enjoy the benefits of electronic payment authorization and transactions while minimizing the risks of fraudulent transactions and the loss of public funds.

For the reasons set forth above, FMS proposes to alter system of records Treasury/FMS .016-Payment Records for Other Than Regular Recurring Benefit Payments, as follows:

Treasury/FMS .016

SYSTEM NAME:

Payment Records for Other Than Regular Recurring Benefit Payments—Treasury/Financial Management Service.

SYSTEM LOCATION:

Description of the change: After the existing sentence, insert the following:

"Records also are located throughout the United States at Federal Reserve Banks which act as Treasury's fiscal agents. The address(es) of the fiscal agents may be obtained from the system managers."

* * * * *

STORAGE:

Description of the change: Remove the current entry and insert the following:

"Records are maintained in electronic or magnetic media and hard copy."

* * * * *

RETENTION AND DISPOSAL:

Description of the change: Remove the current entry and insert the following:

"Some records are retained for three years; other records for payments are retained indefinitely. Records are retained in accordance with statute, court order or Treasury Directive 25–02, Records Disposition Management Program. Audit logs of transactions are retained for a period of six (6) months or as otherwise required by statute or court order. Records in electronic media are electronically erased using industry-accepted techniques."

* * * * *

SYSTEM MANAGER(S) ADDRESS:

Description of the change: Remove the current entry and insert the following:

"Chief Disbursing Officer, Financial Management Service; Chief Architect, Federal Finance, Financial Management Service; or, Director, ASAP Program Office, Federal Finance, Financial Management Service, 401 14th Street, SW., Washington, DC 20227."

* * * * *

RECORD SOURCE CATEGORIES:

Description of the change: Remove the current entry and insert the following:

"Federal departments and agencies responsible for certifying, disbursing and collecting Federal payments; Treasury fiscal and financial agents that process payments and collections; and commercial database vendors. Each of these record sources may include information obtained from individuals."

* * * * *

Dated: April 27, 2004.

Jesus H. Delgado-Jenkins,

Acting Assistant Secretary for Management.

[FR Doc. 04–10204 Filed 5–5–04; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 945, 945–A, and 945–V

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 945, Annual Return of Withheld Federal Income Tax; Form 945–A, Annual Record of Federal Tax Liability; and Form 945–V, Form 945 Payment Voucher.

DATES: Written comments should be received on or before July 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Return of Withheld Federal Income Tax (Form 945), Annual Record of Federal Tax Liability (Form 945–A), and Form 945 Payment Voucher (Form 945–V).

OMB Number: 1545–1430.

Form Numbers: 945, 945–A, and 945–V.

Abstract: Form 945 is used to report income tax withholding on nonpayroll payments including backup withholding and withholding on pensions, annuities, IRAs, military retirement, and gambling winnings. Form 945–A is used to report nonpayroll tax liabilities. Form 945–V is a payment voucher that is used by those taxpayers who submit a payment with their return.

Current Actions: The "Calendar Year" line was added to conform with the format of similar business forms.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 193,468.

Estimated Time Per Respondent: 10 hours, 44 minutes.

Estimated Total Annual Burden Hours: 2,077,017.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–10362 Filed 5–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4562

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4562, Depreciation and Amortization (Including Information on Listed Property).

DATES: Written comments should be received on or before July 6, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Depreciation and Amortization (Including Information on Listed Property).

OMB Number: 1545–0172.

Form Number: Form 4562.

Abstract: Form 4562 is used to claim a deduction for depreciation and amortization; to make the election to expense certain tangible property under Internal Revenue Code section 179; and to provide information on the business/investment use of automobiles and other listed property. The form provides the IRS with the information necessary to determine that the correct depreciation deduction is being claimed.

Current Actions: There are no changes being made to Form 4562 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and individuals.

Estimated Number of Respondents: 6,500,000.

Estimated Time Per Respondent: 48 hours, 42 minutes.

Estimated Total Annual Burden Hours: 316,567,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–10363 Filed 5–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Addition of New Transmitter Encryption Options for Acceptance Testing in November 2004 and Discontinuance of Non-Encrypted Options for IRS e-file by November 2005

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Internal Revenue Service will provide the ability for IRS e-file program participants, who transmit directly to the Electronic Management System (EMS), to use approved encryption methods for the 2005 and later filing seasons, beginning with the Acceptance Testing System (ATS) in November 2004. For the 2005 filing season, IRS intends to begin discontinuing support of non-encrypted transmissions whether by dedicated or dial-up links on the Public Switched Telephone Network (PSTN) with complete phase out by November 2005. Authorized IRS e-file Software Developers should request a copy of the Interface Control Document (ICD), which describes requirements for Internet filing that utilizes Secure Sockets Layer (SSL) Version 3.0 with 128-bit encryption keys in an operational mode using the current modem based file transmission commands within a client commonly termed "TELNET/S".

DATES: Authorized IRS e-file Software Developers should request the "Interface Control Document Between External Trading Partners and Electronic Management System for Encryption" from the Internal Revenue Service by May 28, 2004. Instructions for testing will be provided to the authorized developers at a later date.

SUPPLEMENTARY INFORMATION: This information pertains to IRS e-file software developers who prepare software packages for direct dial-up transmission to IRS e-file EMS sites for individual and business electronic returns and electronic tax documents. This is for the Internet filing replacement of the current dial-up transmissions to the EMS but not for the Forms 1120 and 990 series submitted to the Modernized e-file platform through the Registered User Portal. If the software package for direct filing to IRS EMS provides for Internet filing, it must include an interface to the IRS EMS Front-End Processing Systems' Encrypted Interface URL site. For the 2005 filing season, IRS does not plan to include Internet connectivity for state taxing authorities who retrieve state returns from the State Retrieval Systems located in Austin, TX and Memphis, TN. IRS does plan to offer the States secure Internet access for 2006.

Background

The Internal Revenue Service is charged with protecting taxpayer information using the most feasible, efficient and appropriate methods of protection available. Encrypting the transmissions between the trading partners and the IRS would enhance and complete the existing security provided by the trading partners' systems and by the IRS security zone.

Dedicated Line Filers

Based on an analysis of various e-file trading partner capabilities, the Internal Revenue Service announces that effective for the 2005 Filing Season, it will begin the use of a minimum 128-bit FIPS approved but trading partner-chosen, procured, and installed method of encryption for use on trading partner-provided dedicated line(s). These dedicated lines may continue to be terminated at the Austin and Memphis EMS locations and will permit use of the existing TELNET and FTP protocol methods. IRS will send to each dedicated line trading partner a revised annual Dedicated Leased Line Application on which the Trading Partner will be able to identify the evaluation number referencing the chosen encryption method (*e.g.*, Brand, Model Number, FIPS 140-x, Evaluation Number xxx, and Evaluation Date). Means of terminating encrypted transmissions for dedicated line users could vary, determined by user configuration. For filers using dedicated lines terminating on IRS network equipment, the IRS will provide the IOS implemented 128-bit IPSec 3DES encryption services on the IRS equipment and provide configuration support for the Trading Partner equipment. IRS will contact each dedicated leased line Trading Partner after receiving a revised dedicated leased line application.

Internet Transmission Filers

Recognizing that the majority of e-commerce and e-government applications are migrating to the Internet and using standard technologies, the Internal Revenue Service will provide the ability for authorized e-file Trading Partners to electronically transmit return information via an IRS-provided and certified secure Internet transport. Use of this secure Internet transport will require the use of Secure Sockets Layer (SSL) Version 3.0 using 128-bit encryption keys in an operational mode using the current modem based file transmission commands within a client commonly termed "TELNET/S". Note that EMS is unable to support the FTP protocol over the TELNET/S connection, but will continue to support Zmodem, YModem Batch, and XModem 1K. Support for SSL is provided at no extra cost in most Operating Systems available for the last five years, and is supported by the majority of Internet Service Providers (ISPs).

Cost Impacts and Taxpayer Burdens

The cost impact of the Internet SSL method to IRS e-filers is expected to be minimal. The transmitters will incur the cost of the ISP, however, many of them already have and use an ISP. Currently the transmitters must pay for the long distance telephone call to the IRS front-end sites, and must make multiple calls if their transmission volume is high. Historic technologies also incur "dropped" calls. With use of the Internet, these occurrences should be reduced. Additionally, dial up access to ISPs are normally via local calls, including alternate phone numbers.

Implementation Schedule

The IRS will attempt to ensure that the standards described in the ICD are generally compliant to those adopted by other IRS e-commerce Internet interfaces. The Internal Revenue Service will make a test facility available to its authorized e-file software developers on or about July 15, 2004, and have a production Assurance Testing (ATS) facility for authorized e-file transmitters and software developers by November 1, 2004.

The Internal Revenue Service encourages all current and prospective transmitters to begin using the new encryption methods by November 1, 2004. Dedicated leased line transmitters are encouraged to implement encryption at their earliest convenience and at a time that is mutually agreeable to both the trading partner and the Internal Revenue Service, prior to November 1, 2004.

Discontinuance of Existing Dial-Up Analog and Dial-Up ISDN Service

Effective December 1, 2003, the Service no longer accepts requests for support of IRS dial-up ISDN services. During 2005, the IRS will phase down the number of its existing analog, PSTN dial-up line services and its companion existing ISDN dial-up line services. The service will maintain an analog dial infrastructure to use if emergency conditions warrant. Full dial up

infrastructure retirement is planned for 2006.

ADDRESSES: E-mail requests from authorized IRS e-file Software Developers for the Interface Control Document entitled E-FILE ENCRYPTION ICD to *efile.transmission.encryption@irs.gov*.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Carolyn Davis—202–283–0589 (not a toll-free number). You may write to Carolyn E. Davis, Senior Program Analyst, IRS, Electronic Tax Administration, OS:CIO:I:ET:S:SP, 5000 Ellin Road, Room C4–187, Lanham, MD 20706.

Dated: April 28, 2004.

Jo Ann Bass,

Director Strategic Services Division, Electronic Tax Administration.

[FR Doc. 04–10361 Filed 5–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee will be conducted in Brooklyn, NY. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 3, 2004, and Friday, June 4, 2004.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227 (toll-free), or 954–423–7977 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Thursday, June 3, 2004, from 8 a.m. to 12 p.m. and from 1 p.m. to 5 p.m. e.d.t. and Friday, June 4, 2004, from 8 a.m. to 12 p.m. e.d.t. in Brooklyn, NY at 625 Fulton Street, Conference Room 2-C, Brooklyn, NY 11201. For information, or to confirm attendance, notification of intent to attend the meeting must be made with Inez De Jesus. Ms. De Jesus may be reached at 1–888–912–1227 or (954) 423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include the following: various IRS issues.

Dated: May 3, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–10364 Filed 5–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on June 16, 2004, from 9 a.m. to 3 p.m. The meeting will be held in Room 830 at Va Central Office, 810 Vermont Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the Group is to advise the Secretary and Under Secretary for Health on the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA). The agenda for the meeting will include discussions on budget, legislative issues, CARES, research, special populations, trends in medical education and the role of VA, care coordination and responding to the needs of returning service men and women.

Any member of the public wishing to attend should contact Juanita Leslie, Office of Administrative Operations (10B2), Veterans Health Administration, Department of Veterans Affairs at (202) 273–5882. No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be submitted to Juanita Leslie before the meeting or within 10 days after the meeting.

Dated: April 29, 2004.

By Direction of the Secretary of Veterans Affairs.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–10255 Filed 5–5–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

VA Directive and Handbook 5021, Employee/Management Relations

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 302 of the Veterans Health Care, Capital Asset and Business Improvement Act of 2003 (Public Law 108–170), dated December 6, 2003, authorizes the Secretary of Veterans Affairs to appoint chiropractors as permanent full-time title 38 employees under 38 U.S.C. 7401(1). Also appointed under this authority are physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. Upon successful completion of probationary status as required by 38 U.S.C. 7403(b), these title 38 employees may file an appeal to a Disciplinary Appeals Board if they are subjected to major adverse action that is based in whole or in part on a question of professional conduct and competence.

As part of its implementation of Public Law 108–170, the Department of Veterans Affairs proposes to revise its Directive and Handbook 5021, Employee/Management Relations, to clarify that chiropractors now have the same right to appeal major adverse actions to Disciplinary Appeal Boards as other title 38 employees. The revisions that are the subject of this notice will amend portions of the following regulations: VA Directive 5021, Appendix A, sections A.1., A.2., C.1. and C.2.; VA Handbook 5021, part II, chapter 1, sections 1 and 2; and VA Handbook 5021, part V, chapter 1, section 1. In some of these sections, the word "chiropractors" has been added to a listing of occupations appointed under 38 U.S.C. 7401(1). In the other sections, Public Law 108–170 has been added to an existing list of statutory references. In all cases, the words or phrases that are proposed to be added to the regulations are shown in brackets. Only those sections of the existing regulations that contain proposed changes are included in this notice.

DATES: Comments must be received on or before June 7, 2004. The effective date of these amendments is 30 days after publication of this notice.

ADDRESSES: Send written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments received will be available for public

inspection in the Office of Regulation Policy and Management, Room 1063 B.

FOR FURTHER INFORMATION CONTACT: Jeanette Anderson, Employee Relations Specialist, Department of Veterans Affairs, Office of Human Resources Management (051E), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Anderson may be reached at (202) 273–9901.

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 7461(e) requires that "[w]henever the Secretary proposes to prescribe regulations [relating to Disciplinary Appeals Boards] under this subchapter, the Secretary shall publish the proposed regulations in the **Federal Register** for notice and comment not less the 30 days before the day on which they take effect."

Proposed Revisions to VA Directive 5021, Employee/Management Relations Appendix A. Disciplinary and Grievance Procedures

Section A. Disciplinary and Major Adverse Actions

1. Scope and Authority

a. This section governs disciplinary and major adverse actions based on conduct or performance in the Department of Veterans Affairs (VA). The provisions of this section apply to VA employees holding a full-time, permanent appointment under 38 U.S.C. 7401(1) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries. Henceforth, "employee(s)" will be the term used to refer to the above categories in this section, unless otherwise specified.

b. This chapter does not apply to employees appointed under 38 U.S.C., chapters 3, 71 or 78, or to employees appointed under 38 U.S.C. 7306, 38 U.S.C. 7401(3), 38 U.S.C. 7405, or 38 U.S.C. 7406.

(Authority: 38 U.S.C. 501(a), 7401, 7403(b), 7405, [7421,] 38 U.S.C. 7461–7464.)

2. References

a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102–40).

b. Section 302 of the Veterans Health Care, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108–170).

c. Title 38, United States Code, chapter 74.

Section C. Appeals to the Disciplinary Appeals Board

1. Scope, Authority and Definitions

This section governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in the Department of Veterans Affairs (VA). Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay, and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence include issues of professional judgment. This section applies to VA employees holding a full-time, permanent appointment under 38 U.S.C. 7401(1) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. The (preceding) categories of individuals are included in the term "employee(s)" as used in this section unless otherwise specified.

(Authority: 38 U.S.C. 501(a), 7401, 7403(b), 7421, 38 U.S.C. 7461–7464.)

2. References

a. Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102–40).

[b. Section 302 of the Veterans Health Care, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108–170).]

[c.] 38 U.S.C. 501(a), 7421, 7461, 7462, 7464.

Proposed Revisions to VA Handbook 5021, Employee/Management Relations

Part II. Disciplinary Procedures Under Title 38 Chapter 1. Disciplinary and Major Adverse Actions

1. Scope

a. This part governs disciplinary and major adverse actions based on conduct or performance in the Department of Veterans Affairs (VA).

(1) The provisions of this chapter apply to VA employees holding a full-time, permanent appointment under 38 United States Code (U.S.C.) 7401(1) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included are:

(a) Physicians,
(b) Dentists,
(c) Podiatrists,
[(d)] [Chiropractors,]
[(e)] Optometrists,
[(f)] Nurses,
[(g)] Nurse anesthetists,
[(h)] Physician assistants, and
[(i)] Expanded-function dental auxiliaries.

(2) Henceforth, "employee(s)" will be the term used to refer to the covered occupations in this chapter, unless otherwise specified.

(3) This part should be used in conjunction with VA Directive 5021.

b. This chapter does not apply to employees appointed under 38 U.S.C., chapters 3, 71 or 78, or to employees appointed under 38 U.S.C. 7306, 38 U.S.C. 7401(3), 38 U.S.C. 7405, or 38 U.S.C. 7406.

2. Authority

a. Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 Public Law (Pub. L.) 102–40.

[b. Section 302 of the Veterans Health Care, Capital Asset and Business Improvement Act of 2003 (Pub. L. 108–170).]

[c.] 38 U.S.C. 501(a), 38 U.S.C. 7304 [, 7421].

d. Title 38, U.S.C., chapter 74.

Part V. Title 38 Appeals to the Disciplinary Appeals Board Chapter 1. General

1. Scope, Authority and Definitions

This chapter applies to Department of Veterans Affairs (VA) employees holding a full-time, permanent appointment under 38 U.S.C. 7401(1) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. These categories of individuals are included in the term "employee(s)" as used in this chapter unless otherwise specified. This chapter governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in VA. Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay, and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment.

Dated: April 29, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–10254 Filed 5–5–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 69, No. 88
Thursday, May 6, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

[I.D. 041604C]

Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 31–1741; U.S. Fish and Wildlife Service File No. MA081663–0

Correction

In notice document 04–9453 appearing on page 22770 in the issue of Tuesday, April 27, 2004, make the following correction:

On page 22770, in the third column, in the next to last line, the document number "04–9453" should read "04–9543".

[FR Doc. C4–9543 Filed 5–5–04; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17420; Airspace Docket No. 04–ACE–21]

Modification of Class E Airspace; Moberly, MO

Correction

In rule document 04–9916 beginning on page 24064 in the issue of Monday, May 3, 2004, make the following correction:

§71.1 [Corrected]

On page 24065, in the third column, in §71.1, under the heading **ACE MO E5 Moberly, MO**, in the fourth line, "6.5–mile" should read, "6.4–mile".

[FR Doc. C4–9916 Filed 5–5–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
May 6, 2004

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, and 178

Hazardous Materials Regulations: Transportation of Compressed Oxygen, Other Oxidizing Gases and Chemical Oxygen Generators on Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, and 178

[Docket No. RSPA–04–17664 (HM–224B)]

RIN 2137–AD33

Hazardous Materials Regulations: Transportation of Compressed Oxygen, Other Oxidizing Gases and Chemical Oxygen Generators on Aircraft

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend the Hazardous Materials Regulations to require that cylinders of compressed oxygen and packages of chemical oxygen generators be placed in an outer packaging that meets certain flame penetration and thermal resistance requirements when transported aboard an aircraft. RSPA is also proposing to: (1) Revise the pressure relief device setting limit on cylinders of compressed oxygen transported aboard aircraft; (2) limit the types of cylinders authorized to transport compressed oxygen aboard aircraft; (3) prohibit the transportation of all oxidizing gases, other than compressed oxygen aboard cargo and passenger aircraft; and (4) convert most of the provisions of an oxygen generator approval into the HMR. This proposal would increase the level of safety associated with transportation of these materials aboard aircraft. This proposal was developed jointly with the Federal Aviation Administration (FAA).

DATES: Submit your comments on or before August 13, 2004.

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

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Web site: *http://regulations.gov.* Follow instructions for submitting comments.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–402, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number RSPA–04–17664 (HM–224B) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation 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 section of this document.

FOR FURTHER INFORMATION CONTACT: John A. Gale, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 or David Catey, Office of Flight Standards, (202) 267–3732, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington DC 20591.

SUPPLEMENTARY INFORMATION:

I. Background

The National Transportation Safety Board found that one of the probable causes of the May 11, 1996 crash of ValuJet Airlines flight No. 596 was a fire in the airplane's cargo compartment that was initiated and enhanced by the actuation of one or more chemical oxygen generators that were being improperly carried as cargo. Following that tragedy, in which 110 lives were lost, the Department of Transportation has:

—Prohibited the transportation of chemical oxygen generators (including personal-use chemical oxygen generators) on board passenger-carrying aircraft and the transportation of spent chemical oxygen generators on both passenger-carrying and cargo-only aircraft, 61 FR 26418 (May 24, 1996), 61 FR 68952 (Dec. 30, 1996), 64 FR 45388 (Aug. 19, 1999);

—Issued standards governing the transportation of chemical oxygen generators on cargo-only aircraft (and by motor vehicle, rail car and vessel), including the requirement for an approval issued by RSPA, 62 FR 30767 (June 5, 1997), 62 FR 34667 (June 27, 1997);

—Upgraded fire safety standards for Class D cargo compartments on aircraft to require a smoke or fire detection system and a means of suppressing a fire or minimizing the available oxygen, on certain transport-category aircraft, 63 FR 8033 (Feb. 17, 1998); and

—Imposed additional requirements on the transportation of cylinders of compressed oxygen by aircraft and prohibited the carriage of chemical oxidizers in inaccessible aircraft cargo compartments that do not have a fire or smoke detection and fire suppression system, 64 FR 45388 (Aug. 19, 1999).

In the August 19, 1999 final rule (in Docket No. HM–224A), we (RSPA) amended the HMR to: (1) Allow a limited number of cylinders containing medical-use oxygen to be carried in the cabin of a passenger-carrying aircraft, 49 CFR 175.10(b); (2) limit the number of oxygen cylinders that may be carried as cargo in compartments that lack a fire suppression system and require that cylinders be stowed horizontally on the floor or as close as practicable to the floor of the cargo compartment or unit load device, 49 CFR 175.85(h) & (i); and (3) require each cylinder of compressed oxygen (in the passenger cabin or a cargo compartment) to be placed in an overpack or outer packaging that meets the performance criteria of Air Transport Association Specification 300 for Type I (ATA 300) shipping containers, 49 CFR 172.102, special provision A52. Based on the comments submitted in that proceeding and our assessment of alternatives, RSPA did not adopt the proposal in the notice of proposed rulemaking in docket No. HM–224A to prohibit all transportation of compressed oxygen on passenger-carrying aircraft.

Rigid ATA 300 shipping containers are resilient, durable packaging that provides protection from shock and vibration and can be reused for at least 100 round trips. In the preamble to the August 19, 1999 final rule, we explained that testing conducted by FAA indicated that the ATA 300 container provides an "incremental" level of thermal protection for oxygen cylinders, by increasing the time before a cylinder exposed to a fire would release its contents. However, FAA's testing also indicated that the risk posed by a compressed oxygen cylinder in a cargo compartment can be further reduced, or even eliminated, if the cylinder is placed in an overpack or outer packaging that provides more thermal protection and flame resistence than the ATA 300 containers presently in use. Accordingly, we announced that we were "considering a requirement that an oxygen cylinder may be carried in an inaccessible cargo compartment on an aircraft only when the cylinder is placed

in an outer packaging or overpack meeting certain flame penetration resistance, thermal protection, and integrity standards." 64 FR at 45393.

II. Summary of This NPRM

This rulemaking proposes requirements for such an outer packaging for the transportation of compressed oxygen cylinders and chemical oxygen generators aboard an aircraft because additional testing by FAA indicates that additional protection is necessary for both. The proposed flame penetration standards for this outer packaging are those contained in Part III of Appendix F to 14 CFR part 25 (Test Method to Determine Flame Penetration Resistance of Cargo Compartment Liners). This flame penetration standard specifies that the test specimen be exposed to a flame temperature of 1,700 °F for five minutes. In order to pass the test there must be no flame penetration and the peak temperature 4 inches above the specimen must not exceed 400 °F. The proposed thermal protection standards, to be added in Appendix D to 49 CFR part 178, would specify that, when exposed to a temperature of at least 400 °F for three hours, a cylinder must remain below the temperature at which its pressure relief device (PRD) would activate, and a chemical oxygen generator must not actuate. If the requirements for improved outer packagings are adopted, we would remove the present limitation on the number of cylinders of compressed oxygen that may be transported in a cargo compartment that is not equipped with a fire suppression system, in 49 CFR 175.85(i)(1) and (3).

In addition, we are proposing to: (1) Revise the PRD setting on cylinders of compressed oxygen to better prevent a cylinder from releasing its contents when exposed to a fire; (2) limit the types of cylinders in which compressed oxygen may be transported aboard an aircraft to minimize the number of PRD settings; (3) prohibit the transportation of cylinders containing other oxidizing gases aboard passenger-carrying and cargo aircraft, because a fire in a cargo compartment could overcome a fire suppression system when intensified by these materials; and (4) incorporate into the HMR many of the current provisions RSPA includes in approvals authorizing the transportation of chemical oxygen generators aboard cargo-only aircraft.

III. Proposed Amendments to the HMR

A. Outer Packaging for Compressed Oxygen Cylinders and Oxygen Generators

When installed on an aircraft or provided during flight for the use of passengers or crew members, compressed oxygen in cylinders and oxygen generators are subject to requirements in FAA's regulations in title 14 of the Code of Federal Regulations, and are not subject to the HMR. When transported as cargo, cylinders of compressed oxygen and oxygen generators are subject to requirements in the HMR. Air carriers routinely transport their own oxygen cylinders and oxygen generators as replacement items for use on other aircraft. Some also transport cylinders for their passengers or other customers. Commenters to Docket HM–224A identified a continuing need for the transportation of oxygen cylinders as cargo on both passenger and cargo-only aircraft.

In testing conducted by FAA in 1999, cylinders of compressed oxygen released their contents at temperatures well below those that aircraft cargo compartment liners and structures are designed to withstand. When the surface temperature of a cylinder of compressed oxygen reaches approximately 300 °F, the increase in internal pressure causes the cylinder's pressure relief device to open and release oxygen. If oxygen vents directly into a fire, it can significantly increase the risks posed by the fire. FAA also found that use of an outer packaging may significantly lengthen the time that a cylinder will retain its contents when exposed to fire or heat. Some outer packagings meeting the ATA specification Category I extended the time by up to 60 minutes or more. However, the ATA standard does not specifically address thermal protection or flame penetration. An outer packaging that is designed to provide both thermal protection and flame penetration could provide even more protection. A copy of the test report is available for review in the public docket.

In additional tests conducted in 2002, FAA determined that a sodium chlorate oxygen generator will initiate and release oxygen at a minimum temperature of 600 °F. However, due to uncertainties with other designs and the physical properties of sodium chlorate, the FAA has recommended that oxygen generators not be exposed to temperatures above 400 F. A copy of this test report is also available in the public docket.

An unprotected oxygen cylinder or oxygen generator can quickly and violently release its contents when exposed to temperatures that can be expected from an aircraft cargo compartment fire. Thus, we are proposing to require that cylinders of compressed oxygen and chemical oxygen generators be transported in an outer packaging that: (1) Meets the same flame penetration resistance standards as required for cargo compartment sidewalls and ceiling panels in transport category airplanes; and (2) provides certain thermal protection capabilities so as to retain its contents during an otherwise controllable cargo compartment fire. The outer packaging standard that is being proposed addresses two safety concerns: (1) Protecting a cylinder and a oxygen generator that could be exposed directly to flames from a fire; and (2) protecting a cylinder and a oxygen generator that could be exposed indirectly to heat from a fire. These performance requirements must remain in effect for the entire service life of the outer packaging.

These regulations would require that an outer packaging for an oxygen cylinder and a package containing an oxygen generator meet the standards in Part III of Appendix F to 14 CFR Part 25, Test Method to Determine Flame Penetration Resistance of Cargo Compartment Liners. In order to comply with the requirements of the flame penetration resistance test, a flat 16 by 24 inch test specimen must be constructed that represents the outer package design. At least three specimens of outer packaging materials and each different design feature must be tested. Each specimen tested must simulate the outer packaging, including any design features, such as handles, latches, seams, hinges, etc., the failure of which would affect the capability of the outer packaging to prevent actuation of the oxygen cylinder pressure relief mechanisms or actuation of the oxygen generator. Each specimen must be placed in the horizontal ceiling position of the test apparatus, and must prevent flame penetration for a period of 5 minutes and the maximum allowable temperature at a point 4 inches above the test specimen, centered over the burner cone, may not exceed 400 °F. Typically, the outer packaging closure mechanism, seam or hinges are tested independently in a longitudinal fashion, centered over the burner flame. See "Burnthrough Test Procedures for Cargo Liner Design Features," DOT/FAA/CT–TN 88/33. Thus, an outer packaging's materials of construction would be required to prevent penetration by a

flame of 1,700 °F for five minutes, in accordance with part III of appendix F paragraph (f)(5) of 14 CFR part 25.

In addition, we propose to require that a cylinder of compressed oxygen remain below the temperature at which its pressure relief device would activate, and that an oxygen generator not actuate, when exposed to a temperature of at least 400 °F for three hours. The 400 °F temperature is the estimated mean temperature of a cargo compartment during a halon-suppressed fire.[1] Three hours and 27 minutes is the maximum estimated diversion time for an aircraft flying a southern or oceanic route. Data collected during the FAA tests indicates that, on average, a 3AA oxygen cylinder with a pressure relief device (PRD) set at cylinder test pressure will open when the cylinder reaches a temperature of approximately 300 °F. This result agrees with calculations performed by RSPA. In analyzing PRD function, RSPA calculated that a 3HT cylinder with a PRD set at 90% of cylinder test pressure will vent at temperatures greater than 220 °F. In order to assure an adequate safety margin for all authorized cylinders, including 3HT cylinders, we are proposing that cylinders of compressed oxygen contained in an outer packaging not reach an external temperature of 93 °C (199 °F) when exposed to a 400 °F temperature for three hours. A thermal resistance test for packagings for oxygen cylinders and oxygen generators would be added in appendix D to part 178.

In addition to meeting the flame penetration and thermal resistance protection requirements, we would continue to require that the outer packaging for compressed oxygen cylinders meet certain performance criteria. That requirement is currently based on ATA Specification 300. However, in order to provide greater flexibility in the design of these packagings, we are proposing to allow the outer packaging to be built either to the ATA Specification 300 standard or to a UN standard at the Packing Group II performance level. In addition, in order to clarify our original intent in adopting the ATA Specification 300, and in order to ensure an adequate level of safety, we are proposing to authorize only rigid outer packagings.

[1] The FAA is currently evaluating other non-ozone-depleting suppression agents that could eventually be used in cargo compartments. Some of these agents can maintain an adequate level of safety in the compartment, but the mean temperature may be slightly higher than 400 °F, which is the level found during typical halon-suppressed fires. If an alternate agent is used, the oven soak temperature level may need to be adjusted accordingly.

Because of the added safety margin associated with these improved outer packagings, we are proposing to remove the limits in § 175.85(i) on the number of oxygen cylinders that may be transported in cargo compartments that are not equipped with fire/smoke detection and fire suppression systems. In addition, to provide industry with sufficient time to retrofit or replace existing outer packagings we propose an effeetive date of one year after publication of the final rule as the mandatory date to comply with the new thermal resistance and flame penetration resistance standards for outer packagings for oxygen cylinders and oxygen generators transported on board aircraft.

Transport category airplane cargo compartments are classified under 14 CFR 25.857. Classifications vary based on accessibility to crewmembers during flight and methods implemented to mitigate fire hazards (cargo liner, fire/smoke detection, fire suppression, and control of air flow). These compartments must meet the requirements of §§ 25.855 and 25.858, as appropriate. There are no airworthiness standards pertaining to the classification of cargo compartments for other category airplanes certificated under 14 CFR.

B. Pressure Relief Device Settings and Authorized Cylinders for Compressed Oxygen

In this NPRM, we are proposing a new limit on the pressure relief device settings on cylinders containing compressed oxygen when transported aboard aircraft. These changes will help ensure that the cylinder contents are not released into an aircraft cargo compartment in the event of a fire. In order to accomplish this, we must limit the PRD to a setting that will prevent it from releasing at temperatures that the cylinder will experience while protected by the outer packaging. PRD requirements for DOT specification cylinders are found in the Compressed Gas Association (CGA) Pamphlet S–1.1. On high pressure oxygen cylinders, the authorized PRD's are CG–4 and CG–5 combination rupture disk/fusible plug devices, and CG–1 rupture disk devices. According to CGA Pamphlet S–1.1, the burst pressure of the disks must be no greater than the minimum cylinder test pressure. CGA Pamphlet S–1.1 does not set a lower burst limit on the disks; therefore, cylinders could be equipped with CG–1 rupture disks that could release product at any elevated temperature. RSPA believes the current CGA Pamphlet S–1.1 pamphlet requirements did not consider exposure of cylinders to aircraft cargo compartment fires. In this NPRM we propose that oxygen cylinders be equipped with PRD's that have a set pressure equal to cylinder test pressure with allowable tolerances of −10 to plus zero percent. This is the same tolerance required by the CGA S–1.1 pamphlet for all rupture disks.

Currently, in accordance with § 173.302a(a)(2), DOT 3HT cylinders must be equipped with rupture disks that have a rated bursting pressure which does not exceed 90 percent of the cylinder test pressure. Under the current rule, there is no lower limit on the required PRD setting. The rupture disks for DOT 3HT cylinders are set at a lower pressure than for other cylinders because the DOT 3HT cylinder has a lower safety factor (ratio of burst to service pressure) than other seamless cylinders. For oxygen transported in DOT 3HT specification cylinders, we propose that the PRD have a rated burst pressure of 90% of the cylinder test pressure with allowable tolerances of −10 to plus zero percent.

In a letter to RSPA, an industry representative states that for medical oxygen cylinders the common practice is for companies to use a PRD with the rated rupture disc burst pressure at the cylinder test pressure. The companies use the setting at test pressure rather than at a lower pressure in order to prevent losing product through an early release of the PRD. In most cases, the proposed PRD setting at 100% of test pressure will not impose a burden on the industry. RSPA understands that there may be circumstances for which the new requirement may result in a burden. Comments are requested from companies that may be affected by this proposal.

In this NPRM, we are also proposing that the cylinders authorized for the transportation of compressed oxygen aboard aircraft be limited to DOT specifications 3A, 3AA, 3AL, and 3HT. According to the information available to RSPA at this time, these are the most commonly used cylinders for this service. In some cases, such as the DOT specification 39 cylinder, the PRD setting requirements are different than for the most commonly used cylinders. To avoid a situation where there are numerous PRD setting requirements for oxygen cylinders aboard aircraft, we propose to limit the authorized cylinders to the four specifications listed above.

C. Other Oxidizing Gases Aboard Aircraft

We are also proposing to prohibit the transportation of all oxidizing gases,

except compressed oxygen, aboard cargo and passenger aircraft. These affected materials are covered under the shipping descriptions "Air, refrigerated liquid, (cryogenic liquid)," "Carbon dioxide and oxygen mixtures, compressed," "Nitrous oxide," "Nitrogen *trifluoride*, compressed", "Compressed gas, oxidizing, n.o.s.," and "Liquified gas, oxidizing, n.o.s." We believe that cylinders of these oxidizing gases could also, if exposed to a fire, intensify a fire to the extent that the fire could overcome the compartment's halon fire suppression system and cause severe damage to the aircraft. However, unlike compressed oxygen, we have no information to support the need to allow these materials to continue to be transported aboard aircraft.

D. Chemical Oxygen Generator Approval

The June 5, 1997, final rule under Docket HM–224A amended the HMR by (1) adding a specific shipping description to the Hazardous Materials Table for chemical oxygen generators; and (2) requiring approval of a chemical oxygen generator, and its packaging, when the chemical oxygen generator is to be transported, by any mode, with its means of initiation attached. There are currently over 180 holders of the chemical oxygen generator approval. (62 FR 30767) We now believe that those aspects of the approval that deal with safety controls, packaging and marking can be incorporated into the HMR, thus eliminating the need for many persons to be holders of the approval. We will still require approval of a chemical oxygen generator; however, this approval process would be limited to those persons who manufacture oxygen generators and not distributors or persons who re-ship them. Therefore, we are proposing to add a new § 173.168 that would specify: (1) The number and type of means that must be incorporated into an oxygen generator design in order to prevent actuation; (2) that the oxygen generator must be capable of withstanding a 1.8 meter drop with no loss of contents or actuation; (3) packaging requirements; (4) shipping paper requirements; and (5) marking requirements for those oxygen generators that are installed in a piece of equipment which is sealed or otherwise difficult to determine if an oxygen generator is present. In addition, we are proposing to specify in the HMR that a chemical oxygen generator that has past the manufacturer's expiration date is forbidden for transportation by aircraft. Through the approval process, RSPA had not allowed the transportation of expired oxygen generators aboard aircraft. With the elimination of the approval, for other than oxygen generator manufactures, we believe it is now necessary to specify this restriction in the HMR.

IV. Effects on Individuals With Disabilities

Under separate RSPA and FAA rules [49 CFR 175.10(a)(7), and 14 CFR 121.574 and 135.91, respectively], which this proposal would not amend, passengers may not carry their own oxygen aboard aircraft for use during flight. Air carriers are permitted to provide oxygen for passenger use in accordance with specified requirements in the aforementioned rules, although some air carriers may choose not to provide this service for their passengers. RSPA seeks comment on whether the new proposed provisions placed on carriage of air carriers' own oxygen cylinders will significantly interfere with carriers' ability to provide this service, or increase the costs of this service, to passengers.

The Office of the Secretary, RSPA and FAA have initiated a project separate from this rulemaking action to explore whether safe alternatives exist for accommodating passenger needs in regard to use of medical oxygen. This project may result in proposals to amend the relevant portions of the HMR and FAA regulations, as well as those of the Office of the Secretary implementing the Air Carrier Access Act of 1986 (49 U.S.C. 41705), which prohibits discrimination in regard to air traveler access on the basis of disability.

V. Request for Comments

We ask you to address the following questions, to the extent you are able, in your comments on the proposals in this NPRM:

1. How well do the test protocols followed by FAA approximate the conditions of real-life incidents?

2. How many different types of outer packagings meeting the proposed thermal resistance and flame penetration resistance requirements would be needed for oxygen service and/or oxygen generator service? How many outer packagings of each type would be needed?

3. Are the cylinders in service sufficiently uniform to permit development of a limited number of standardized outer packagings?

4. Is it practical to retrofit existing outer packagings and what would be the costs of the retrofit?

5. What would be the estimated cost for an outer packaging that meets the proposed thermal and flame penetration resistance requirements? What is the average cost of currently used outer packagings?

6. Are there other means of providing an equivalent level of safety that RSPA should consider in formulating a final rule?

7. Will the one-year implementation date provide sufficient time for development, manufacture, and staging of the proposed outer packagings? Can the proposed regulation be implemented over a shorter time period?

8. Should the HMR incorporate different outer packaging standards based on the type of cargo compartment in which the cylinder will be transported? What should those standards be?

9. Should the HMR incorporate different outer packaging standards based on whether transport is on passenger or cargo aircraft? What should the exposure temperature capability be?

10. Should an exposure temperature greater than 400 °F be used for the thermal resistance test to accommodate variance in fire suppression agents? What should the temperature be?

11. How many cylinders would be affected by the proposal to require pressure relief devices to have a rated burst pressure of the cylinder test pressure minus 10%, plus 0%? What would be the cost of this requirement?

12. Should the flame penetration standard, currently contained in 14 CFR part 25 be incorporated by reference into the HMR or should it be duplicated in the HMR?

13. Is there a need for other oxidizing gases to be transported aboard an aircraft? Which gases? What performance standards should apply to outer packagings for such gases?

14. Will the costs imposed by this rulemaking cause you, an airline operator, to discontinue providing oxygen service to persons with disabilities?

15. Will this proposal increase the current charges that are imposed on persons needing supplemental oxygen during flight? If so, what will be the increase in the fee?

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule, if adopted, would be considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. This rule would also be significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A copy of the preliminary regulatory evaluation is

available for review in the public docket.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt State, local and Indian tribe requirements, but does not propose any regulation that has direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses item 5 above and would preempt any State, local, or Indian tribe requirements not meeting the "substantially the same" standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA proposes that the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule, if adopted, would not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration recommends that "small" represent the impacted entities with 1,500 or fewer employees. For this proposed rule, small entities are part 121 and part 135 air carriers with 1,500 or fewer employees that are approved to carry hazardous materials. DOT identified 729 air carriers that meet this definition. DOT contacted several of these entities to estimate the number of containers that each small air carrier uses to transport oxygen cylinders aboard aircraft in other than the passenger cabin. From conversations with container manufacturers, DOT learned that approximately ten small air carriers transport compressed oxygen cylinders. DOT also believes that each of the ten small air carriers would need approximately 5 compressed oxygen containers to comply with the proposed rule. DOT also estimates that each of ten small carriers would need approximately 5 oxygen generator containers to comply with the proposed rule.

TABLE 2.—INCREMENTAL COSTS PER SMALL ENTITY

Cost per small entity	NPV of costs over 15 years	Capital recovery factor	Annualized costs
Baseline Costs	$2,937	0.10979	$322
Proposed Costs	10,104	0.10979	1,109
Incremental Costs	7,167	0.10979	787

After calculating the prorated annualized costs per entity using the same assumptions that were used in the cost section, the DOT has determined that the incremental cost impact per small entity would be $787 (Table 2), which RSPA considers is "de minimus" for a small business (See the regulatory evaluation in the public docket). The baseline costs per small entity shown in Table 2 are generated from appendix C by adding the baseline discounted costs of oxygen cylinders and chemical oxygen generator overpacks. Similarly, proposed costs in Table 2 are generated by adding discounted costs of the proposed rule for oxygen cylinder and chemical oxygen generator overpacks in Table 2. Annualized costs are calculated by applying a capital recovery factor to total incremental costs.

Besides small airlines, there may also be small entities that are distributors or other types of companies that transport oxygen cylinders and/or chemical oxygen generators on aircraft. DOT does not believe that any other small entities transport oxygen cylinders. However

there may be small entities besides airlines that distribute on airlines chemical oxygen generators and will be affected by this rule. RSPA welcomes cost information from these small entities.

Thus, RSPA has determined that this proposed rule would not have a significant impact on a substantial number of small entities. RSPA calls for comments on this analysis.

E. Unfunded Mandates Reform Act of 1995

This proposed rule, if adopted, would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This NPRM is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

This proposed rule may result in an information collection and recordkeeping burden increase under OMB Control Number 2137–0572, due to proposed changes in package design and testing requirements for compressed oxygen and oxygen generators. There will be an editorial change with no change in burden under OMB Control Number 2137–0557, due to proposed changes in section designations regarding approval requirements for oxygen generators. RSPA currently has an approved information collection under OMB Control Number 2137–0557, "Approvals for Hazardous Materials" with 25,605 burden hours which expires on December 31, 2005, and OMB Control Number 2137–0572, "Testing Requirements for Non-Bulk Packaging" with 30,000 burden hours which expires on September 30, 2004.

Section 1320.8(d), title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request that RSPA will submit to OMB for approval based on the requirements in this proposed rule.

RSPA has developed revised burden estimates to reflect changes in this proposed rule. RSPA estimates that, based on the proposals to in this rule, the current information collection burden for "Testing Requirements for Non-Bulk Packaging" will be as follows: "Testing Requirements for Non-Bulk Packaging"

OMB Number: 2137–0572.

Total Annual Number of Respondents: 5,010.

Total Annual Responses: 15,500.

Total Annual Burden Hours: 32,500.

Total Annual Burden Cost: $812,500.00.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the DATES section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

G. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. RSPA developed an assessment to consider the effects of these revisions on the environment and determine whether a more comprehensive environmental impact statement may be required. We have tentatively concluded that there are no significant environmental impacts associated with this proposed rule. Interested parties, however, are invited to review the Preliminary Environmental Assessment available in the docket and to comment on what environmental impact, if any, the proposed regulatory changes would have.

H. Regulation Identifier Number (RIN)

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

I. 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*.

J. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

The proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. Furthermore, the proposed rule is consistent with the terms of several trade agreements to which the United States is a signatory, such as the Trade Agreement Act of 1979 (19 U.S.C. 2501 *et seq.*), incorporating the Agreement on Trade in Civil Aircraft (31 U.S.T. 619) and the Agreement on Technical Barriers to Trade (Standards) (19 U.S.C. 2531). The proposed rule is also consistent with 49 U.S.C. 40105, formerly 1102 (a) of the Federal Aviation Act of 1958, as amended, which requires the RSPA to exercise and perform its powers and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air Carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.53.

2. In § 171.11, paragraph (d)(16) is revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(16) A package containing Oxygen, compressed, must be packaged as required by Parts 173 and 178 of this subchapter.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

4. In the Hazardous Materials Table in § 172.101, for the shipping name "Air, refrigerated liquid, (cryogenic liquid)," Column (9B) is revised to read "Forbidden."

5. In the Hazardous Materials Table in § 172.101, for the shipping names "Carbon dioxide and oxygen mixtures, compressed," "Compressed gas, oxidizing, n.o.s.," "Liquified gas, oxidizing, n.o.s.," "Nitrogen trifluoride," and "Nitrous Oxide," Columns (9A) and (9B) are revised to read "Forbidden,".

5a. In the Hazardous Materials Table in § 172.101, for the shipping name "Oxygen, compressed", in column (7), Special Provision "A52" is removed.

6. In the Hazardous Materials Table in § 172.101, for the shipping name "Oxygen generator, chemical," in Column (7), Special Provisions "60, A51" is removed and Column (8B) is revised to read "168."

§ 172.102 [Amended]

7. In § 172.102, in paragraph (c)(1), Special Provisions "60" is removed.

8. In § 172.102, in paragraph (c)(2), Special Provisions "A51" and "A52" are removed.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

10. Section 173.168 is added to read as follows:

§ 173.168 Chemical oxygen generators.

An oxygen generator, chemical (defined in § 171.8 of this subchapter) may be transported only under the following conditions:

(a) *Approval.* A chemical oxygen generator that is shipped with a means of initiation attached must be classed and approved by the Associate Administrator for Hazardous Materials Safety in accordance with the procedures specified in § 173.56 of this subchapter. The approval number must be placed on the shipping paper, in association with the basic description required by § 172.202(a) of this subchapter, required to accompany a chemical oxygen generator in transportation.

(b) *Impact resistance.* A chemical oxygen generator, without any packaging, must be capable of withstanding a 1.8 meter drop onto a rigid, non-resilient, flat and horizontal surface, in the position most likely to cause damage, actuation or loss of contents.

(c) *Protection against inadvertent activation.* A chemical oxygen generator must incorporate one of the following means of preventing inadvertent actuation:

(1) For a chemical oxygen generator that is not installed in protective breathing equipment (PBE):

(i) Mechanically actuated devices:

(A) Two pins, installed so that each is independently capable of preventing the actuator from striking the primer;

(B) One pin and one retaining ring, each installed so that each is independently capable of preventing the actuator from striking the primer; or

(C) A cover securely installed over the primer and a pin installed so as to prevent the actuator from striking the primer and cover.

(ii) Electrically actuated devices: The electrical leads must be mechanically shorted and the mechanical short must be shielded in metal foil.

(iii) Devices with a primer but no actuator: A chemical oxygen generator that has a primer but no actuating mechanism must have a protective cover over the primer to prevent actuation from external impact.

(2) A chemical oxygen generator installed in a PBE must contain a pin installed so as to prevent the actuator from striking the primer, and be placed in a protective bag, pouch, case or cover such that the protective breathing equipment is fully enclosed in such a manner that the protective bag, pouch, case or cover prevents unintentional actuation of the oxygen generator.

(d) *Packaging.* A chemical oxygen generator and a chemical oxygen generator installed in equipment, (*e.g.*, a PBE) must be placed in a rigid packaging that—

(1) Conforms to the requirements of either:

(i) Part 178, subparts L and M, of this subchapter at the Packing Group I or II performance level; or

(ii) The performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container.

(2) With its contents, is capable of meeting the following additional requirements when transported by cargo-only aircraft:

(i) The Flame Penetration Resistance Test in Part III of Appendix F to 14 CFR Part 25, modified as follows:

(A) At least three specimens of the outer packaging materials must be tested;

(B) Each test must be conducted on a flat 16 inch x 24 inch test specimen mounted in the horizontal ceiling position of the test apparatus to represent the outer packaging design;

(C) Testing must be conducted on all design features (latches, seams, hinges, *etc.*) affecting the ability of the overpack to safely prevent the passage of fire in the horizontal ceiling position; and

(D) There must be no flame penetration of any specimen within 5 minutes after application of the flame source and the maximum allowable temperature at a point 4 inches above the test specimen, centered over the burner cone must not exceed 205 °C (400 °F).

(ii) The Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(iii) Prevents all of the following conditions from occurring when one generator in the package is actuated:

(A) Actuation of other generators in the package;

(B) Ignition of the packaging materials; and

(C) A temperature above 100 °C (212 °F) on the outside surface temperature of the package.

(iv) Has all its features in good condition, including all latches, hinges, seams, and other features, and is free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance, verified by a visual inspection of the package before each shipment.

(e) *Equipment marking.* The outside surface of a chemical oxygen generator must be marked to indicate the presence of an oxygen generator (*e.g.*, "oxygen generator, chemical"). The outside surface of equipment containing a chemical oxygen generator that is not readily apparent (*e.g.*, a sealed passenger service unit) must be clearly marked to indicate the presence of the oxygen generator (example: "Oxygen Generator Inside").

(f) *Items forbidden in air transportation.*

(1) A chemical oxygen generator is forbidden for transportation on board a passenger-carrying aircraft.

(2) A chemical oxygen generator is forbidden for transportation by both passenger-carrying and cargo-only aircraft after (i) the manufacturer's expiration date, or (ii) the contents of the generator have been expended.

11. In § 173.302a, paragraph (e) is added to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

* * * * *

(e) *Oxygen, compressed.* A cylinder containing compressed oxygen is authorized for transportation by aircraft only when it meets the following requirements:

(1) Only DOT specification 3A, 3AA, 3AL, and 3HT cylinders are authorized.

(2) Cylinders must be equipped with a pressure relief device (PRD) in accordance with § 173.301(f) except that the rated burst pressure of a rupture disc for DOT 3A, 3AA, and 3AL cylinders must be 100% of the cylinder minimum test pressure and DOT 3HT cylinders must be equipped with a rupture disc type PRD only. The allowable tolerance of a PRD must be −10 to zero percent of the cylinder minimum test pressure.

(3) The cylinder must be placed in a rigid outer packaging that—

(i) Conforms to the requirements of part 178 of this subchapter at the Packing Group I or II performance level or to the performance criteria in Air Transport Association (ATA) Specification 300 for a Category I Shipping Container;

(ii) Is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in Part III of Appendix F to 14 CFR Part 25, modified as follows:

(A) At least three specimens of oxygen cylinder outer packaging materials must be tested;

(B) Each test must be conducted on a flat 16 inch x 24 inch test specimen mounted in the horizontal ceiling position of the test apparatus to represent the overpack design;

(C) Testing must be conducted on all design features (latches, seams, hinges, etc.) affecting the ability of the overpack to safely prevent the passage of fire in the horizontal ceiling position; and

(D) There must be no flame penetration of any specimen within 5 minutes after application of the flame source and the maximum allowable temperature at a point 4 inches above the test specimen, centered over the burner cone must not exceed 205 °C (400 °F); and

(iii) Prior to each shipment, passes a visual inspection that verifies that all features of the packaging are in good condition, including all latches, hinges, seams, and other features, and is free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance performance characteristics of the container.

(4) The cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(5) The cylinder and the outer packaging must both be marked and labeled in accordance with part 172, subparts D and E of this subchapter.

(6) A cylinder of compressed oxygen that has been furnished by an aircraft operator to a passenger in accordance with 14 CFR 121.574 is excepted from the outer packaging requirements of paragraph (e)(3).

PART 175—CARRIAGE BY AIRCRAFT

12. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 175.10, paragraphs (b)(2), (b)(3) and (b)(5)(i) are revised to read as follows:

§ 175.10 Exceptions.

* * * * *

(b) * * *

(2) The rated capacity of each cylinder may not exceed 1,000 L (34 cubic feet);

(3) Each cylinder must conform to the provisions of this subchapter and be placed in:

(i) An outer packaging that conforms to the performance criteria of Air Transport Association (ATA) Specification 300 for a Category I Shipping Container; or

(ii) A metal, plastic or wood outer packaging that conforms to a UN standard at the Packing Group II performance level.

* * * * *

(5) * * *

(i) Section 173.302(e) of this subchapter, subpart C of part 172 of this subchapter, and, for passengers only, subpart H of part 172 of this subchapter.

* * * * *

14. In § 175.85, paragraph (h) is revised and paragraph (i) is removed to read as follows:

§ 175.85 Cargo location.

* * * * *

(h) Except for Oxygen, compressed, no person may load or transport a hazardous material for which an OXIDIZER label is required under this subchapter in an inaccessible cargo compartment that does not have a fire or smoke detection system and a fire suppression system.

PART 178—SPECIFICATIONS FOR PACKAGINGS

15. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

16. A new appendix D to part 178 is added to read as follows:

Appendix D to Part 178—Thermal Resistance Test

1. Scope. This test method evaluates the thermal resistance capabilities of an outer packaging for a cylinder of compressed oxygen and an oxygen generator. When exposed to a temperature of 205 °C (400 °F) for a period of not less than three hours, the outer surface of the enclosed cylinder may not exceed a temperature of 93 °C (199 °F) and the enclosed oxygen generator must not actuate.

2. Apparatus.

2.1 Test Oven. The oven must be large enough in size to fully house the test outer package without clearance problems. The test oven must be capable of reaching a minimum steady state temperature of 205 °C (400 °F) and must be capable of raising the temperature at a rate no less than 28 °C (50 °F) per minute.

2.2 Thermocouples. At least three thermocouples must be used to monitor the temperature inside the oven and an additional three thermocouples must be used to monitor the temperature of the cylinder. The thermocouples must be 1/16 inch, ceramic packed, metal sheathed, type K (Chromel-Alumel), grounded junction with a nominal 30 American wire gauge (AWG) size conductor. The thermocouples measuring the temperature inside the oven must be placed at varying heights to ensure even temperature and proper heat-soak conditions. For the thermocouples measuring the temperature of the cylinder: (1) two of them must be placed on the outer cylinder side wall at approximately 2 inches (5cm) from the top and bottom shoulders of the cylinder; and (2) one must be placed on the cylinder valve body near the pressure relief device.

2.3 Instrumentation. A calibrated recording device or a computerized data acquisition system with an appropriate range should be provided to measure and record the outputs of the thermocouples.

3. Test Specimen.

3.1 Specimen Configuration. Each outer package material type and design must be tested, including any features such as handles, latches, fastening systems, *etc.*, that may compromise the ability of the outer package to provide thermal protection.

3.2 Test Specimen Mounting. The tested outer package must be supported at the four corners using fire brick or other suitable means. The entire bottom surface of the outer package must be exposed to allow exposure to heat.

4. Preparation for Testing.

4.1 The cylinder must be empty of all gas and configured as when filled with a valve and pressure relief device: The oxygen generator must be filled and packaged in the manner that it will be transported.

4.2 Place the package onto supporting bricks or a stand inside the test oven, making certain that suitable clearance is available on all sides of the outer package.

4.3 Pass the thermocouple wires through an access port in the test oven to the appropriate data collection apparatus to continuously monitor the oven temperature.

5. Test Procedure.

5.1 Close oven door and check for proper reading on thermocouples.

5.2 Raise the temperature of the oven at a rate no less than 28 °C (50 °F) per minute to a minimum temperature of 205 °C (400 °F). Maintain a minimum oven temperature of 205 °C (400 °F) for at least three hours. Exposure time begins when the oven steady state temperature reaches a minimum of 205 °C (400 °F).

5.3 At the conclusion of the three-hour period, the outer package may be removed from the oven and allowed to cool naturally.

6. Report.

6.1 Report a complete description of the material being tested, including the manufacturer, size of cylinder, *etc.*

6.2 Record any observations regarding the behavior of the test specimen during exposure, such as smoke production, delamination, resin ignition, and time of occurrence of each event.

6.3 Report the temperature and time history of the cylinder temperature during the entire test for each thermocouple location. Temperature measurements must be recorded at intervals of not more than five (5) minutes. Report the maximum temperatures achieved at all three thermocouple locations and the corresponding time.

7. Requirements.

7.1 For a cylinder, the outer package must provide adequate protection such that the outer surface of the cylinder and valve does not exceed a temperature of 93°C (199°F) at any of the three points where the thermocouples are located.

7.2 For an oxygen generator, the outer packaging must provide adequate protection such that the oxygen generator does not actuate.

Issued in Washington, DC, on April 28, 2004, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–10277 Filed 5–5–04; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/*

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H.R. 1274/P.L. 108–221

To direct the Administrator of General Services to convey to Fresno County, California the existing Federal courthouse in that county. (Apr. 30, 2004; 118 Stat. 619)

H.R. 2489/P.L. 108–222

Cowlitz Indian Tribe Distribution of Judgment Funds Act (Apr. 30, 2004; 118 Stat. 621)

H.R. 3118/P.L. 108–223

To designate the Orville Wright Federal Building and the Wilbur Wright Federal Building in Washington, District of Columbia. (Apr. 30, 2004; 118 Stat. 626)

H.R. 4219/P.L. 108–224

Surface Transportation Extension Act of 2004, Part II (Apr. 30, 2004; 118 Stat. 627)

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