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RESERVATIONS: (202) 741–6008

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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206–AJ71

Federal Long Term Care Insurance Regulation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing the final regulations that set forth rules for the administration of the Federal Long Term Care Insurance Program (FLTCIP).

DATES: *Effective Date:* May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Anne Easton, (202) 606–0770, or *aseaston@opm.gov.*

SUPPLEMENTARY INFORMATION: On February 4, 2003, interim regulations (68 FR 5530) governing the Federal Long Term Care Insurance Program (FLTCIP) became effective. There was a 60-day comment period. Nine comments were received in all regarding the regulations.

One commenter suggested that OPM revise its regulations to include information and procedures relating to other Federal statutes and regulations. OPM declines to do so. These regulations are for the purpose of providing information and guidance regarding the FLTCIP and do not purport to address the applicability or inapplicability of other Federal statutes or regulations to the FLTCIP.

Two commenters suggested that we broaden the definition of ''qualified relative'' to include domestic partners of Federal employees. We have determined that at this time we are not going to add any additional groups to those defined in statute.

Five commenters requested that we delete or modify § 875.407, which states that the Carrier determines the insurability of all applicants and that the Carrier's decision may not be appealed to OPM. They state that the insurance underwriting and the Carrier-determined criteria are not consistent with the intent of the FLTCIP statute. However, we believe that Congressional intent is clear upon reading of the statute. Section 9002(e)(3) of title 5, United States Code, specifically states that ''(n)othing in this chapter shall be considered to require that long-term care insurance coverage be guaranteed to an eligible individual.''

Our intent in administering this Program is to offer coverage to eligible individuals but also to maintain competitive premiums. To guarantee coverage to all eligible individuals or all members of the workforce, regardless of their health, would require significantly higher premiums than are now being charged. This could jeopardize the viability of the Program as the more healthy individuals may choose to purchase their coverage elsewhere.

Four commenters requested that OPM enact an appeal process for insurability decisions made by the Carrier. OPM believes the current process ensures that individuals with adequate training are able to conduct the proper review of appeals. In addition, appeals that go beyond the internal review processes of Long Term Care Partners are handled by an independent, third party vendor, approved by OPM. We believe it is in the best interest of the Federal Long Term Care Insurance Program to leave insurability decisions to trained underwriters, as we do with the Federal Employees' Group Life Insurance Program.

One commenter suggested that we change § 875.104(c) to clarify the enrollee's right to appeal, specifically clarifying that any appeal of the Carrier's reconsideration decision is to be made directly to the Carrier and not OPM. We agree that this clarification is helpful, and are making the change. The same commenter also suggested that we change the term ''misconduct'' in § 875.210(b) (1) to ''gross misconduct.'' We decline to do so, since relevant Federal law and regulations refer to and describe ''misconduct,'' not ''gross misconduct.''

We are also taking this opportunity to make several minor changes and clarifications to the regulation.

We are clarifying in § 875.101 the definition of ''Actively at Work.'' We are broadening paragraph (1)(i) of the definition in two areas. The interim regulations stated that to be considered actively at work, you must be reporting for work ''at your usual place of employment or other location to which Government business requires you to travel.'' We are clarifying the language to ensure that a day spent at a telecommuting location counts as reporting for work. Also, the interim regulations did not specifically state that the requirement to be reporting for work is met with one-half day of active work, although this is how the requirement has been administered. The new language makes this clear.

In addition, we are removing paragraph (1)(iii), which stated that any type of leave or absence from work does not count as being actively at work (except that an alternative work schedule's scheduled day off does count as a day actively at work). This deletion means that an alternative work schedule's scheduled day off will not count as a day actively at work. It is treated just as a day on any other type of leave would be treated; that is, a day not actively at work. However, to offset this change we are liberalizing the actively at work requirement in § 875.404(b)(2) to give employees an entire week, rather than one day, to meet the requirement. With that change, paragraph (b)(2)(iii) became redundant to paragraph (b)(2)(i); thus we deleted the entire paragraph for clarity's sake.

When the interim regulations were published, the FLTCIP law specifically excluded all District of Columbia employees from participation, even though some are eligible for FEHB coverage. The regulations made this exclusion clear. However, since that time, Public Law 108–7 went into effect. Section 138(a) of the law makes employees and annuitants of the D.C. Courts (and their qualified relatives) eligible to apply for insurance under the Program and we held an Open Season for them. We would have changed § 875.201(a)(1) to indicate that these groups became eligible to apply for insurance under the Program. However, later in 2003, Congress enacted Public Law 108–136, the National Defense Authorization Act, which included new provisions for the Federal Long Term

Care Insurance Program in section 561 of that law.

Section 561 of that law amends Section 9001(2)(A) of title 5, United States Code. Three additional groups, and their qualified relatives, are now eligible to apply for insurance under the Program:

- DC Government employees and retirees who were first employed by the DC Government before October 1, 1987,
- Separated Federal employees with title to a deferred annuity, even if they aren't yet receiving that annuity, and
- Retired ''grey'' reservists, even if they are not receiving retirement pay.

The previous addition (employees and annuitants of the DC Courts) made by Public Law 108–7 was, in effect, superceded. (However, those DC Courts individuals hired before October 1, 1987 are added back to the eligible population by Public Law 108–136.)

Another change occurred in legislation (Pub. L. 107–314) giving the Secretary of Defense the authority to determine that employees of a Non-Appropriated Fund (NAF) instrumentality are eligible to apply for insurance under the Federal Program. In § 875.201(a) we are adding language to treat eligible NAF employees and retirees the same as Federal civilian employees or retirees, as the case may be, for this Part.

Notwithstanding our ability to reflect the addition of groups that have been added by congressional action this past year, it has become clear that the regulations do not easily keep up with these legislative changes. Therefore, § 101, ''workforce member'' is being amended to make it clear that when a new group is added by law it is not necessary to amend the regulations to reflect this change. We are changing applicable references to Federal civilian and Postal employees and members of the uniformed services throughout the regulations to ''active workforce member.'' This is to reflect the likelihood in the future of the addition of other groups. The changes in the wording occur in the table of contents and in §§ 101, 201, 204, 206, 211, 404, 405, and 410.

We are changing § 875.208 pertaining to eligibility rules with respect to qualified relatives of deceased individuals. The adult child of a Federal civilian survivor annuitant is considered to be a qualified relative who can apply for coverage, as is the current spouse of that survivor. But this is not the case for qualified relatives of the surviving spouse of a deceased member or a deceased retired member of the uniformed services who is receiving a survivor annuity. Neither their adult children nor their current spouses are considered qualified relatives. We are changing the regulation to extend the same eligibility status to all adult children and current spouses of surviving spouses receiving an annuity, regardless of whether this is based on civilian or uniformed service status.

We are also adding a subsection (c) to § 402 to reflect that we provide an Open Season to employees of newly eligible groups that have been added to FLTCIP. Traditionally, this is a 60-day period where there is abbreviated underwriting (equivalent to what was done in 2002 when the Program first became available) for those active workforce members of the new group.

We are clarifying § 875.403 to state that there are two exceptions to the requirement for full underwriting outside of an open season. Those exceptions are described in § 875.206 and § 875.405 and are for new and newly eligible employees and their spouses, new and newly eligible active members of the uniformed services and their spouses, and the newly married spouses of eligible employees and active members of the uniformed services. They can apply with abbreviated underwriting within 60 days after becoming eligible.

As mentioned previously, we are changing the actively at work requirement in § 875.404(b) (2). An active workforce member who submits an abbreviated underwriting application must now be actively at work at least 1 day during the calendar week immediately before the week that contains the person's original effective date. Interim regulations required that the person be actively at work on the original effective date. If that date fell on a weekend or holiday, the person had to be actively at work on the last workday before that date for coverage to become effective. This change will make it easier for employees to meet the actively at work requirement and should result in fewer postponements of coverage effective dates.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal, Postal and D.C. Government employees and annuitants, active members of the uniformed services, retired members of the uniformed services, their qualified relatives, and the FLTCIP carrier(s).

List of Subjects in 5 CFR Part 875

Administrative practices and procedures, Employee benefit plans, Government contracts, Government employees, Health insurance, Military personnel, Organization and functions, Retirement.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

■ Accordingly, the interim rule establishing 5 CFR part 875 which was published at 68 FR 5530 on February 4, 2003, is adopted as a final rule with the following changes:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

■ 1. The authority citation for part 875 continues to read as follows:

Authority: 5 U.S.C. 9008.

■ 2. Amend § 875.101 by:

■ a. Remove the words ''Federal civilian or Postal employee'' wherever they appear in the section and add, in their place, the words ''active workforce member''.

■ b. Revise the definition of *Actively at work* to read as follows; and

■ c. Revise the definition of *Workforce member* to read as follows:

§ 875.101 Definition.

* * * * *

Actively at work means:

(1) That as an active workforce member other than a member of the uniformed services you meet all of the following conditions:

(i) You are reporting for work at an approved work location and you work at least one-half of your regularly scheduled hours for that day; and

(ii) You are able to perform all the usual and customary duties of your employment on your regular work schedule.

(2) For a member of the uniformed services, that you are on active duty and are physically able to perform the duties of your position.

* * * * *

Workforce member means a Federal civilian or Postal employee, member of the uniformed services, Federal annuitant, retired member of the uniformed services, or member of any other eligible group, as defined in section 9001 of title 5, United States Code. An active workforce member is one who is currently employed or is on active duty.

■ 3. Amend § 875.104 by revising the first sentence of paragraph (c) to read as follows:

§ 875.104 What are the steps required to resolve a dispute involving benefit eligibility or payment of a claim?

* * * * *

(c) If the Carrier upholds its denial (or does not respond within 60 days), you have the right to appeal its reconsideration decision directly to the Carrier.* * *

* * * * *

■ 4. Amend § 875.201 by adding a new sentence at the end of paragraph (a)(1) and by adding a new paragraph (a)(3) to read as follows:

§ 875.201 Am I eligible as a Federal civilian or Postal Employee?

(a) * * *

(1) * * * There is a related exception, however: D.C. government employees and retirees who were first employed by the D.C. government before October 1, 1987 are eligible to apply for coverage.

* * * * *

(3) If you are a Non-Appropriated Fund (NAF) employee or retiree you are eligible to apply when the Secretary of Defense determines such eligibility for the NAF instrumentality that employs you, and you will be treated the same as a Federal civilian employee or retiree (as applicable) under this Part.

* * * * *

■ 5. Amend § 875.202 by revising the last sentence to read as follows:

§ 875.202 Am I eligible as a Federal annuitant?

* * * Separated Federal employees with title to a deferred annuity may apply for coverage, even if they are not yet receiving that annuity.

■ 6. Amend § 875.205 by adding a paragraph (c) to read as follows:

§ 875.205 Am I eligible as a retired member of the uniformed services?

* * * * *

(c) You are eligible to apply for coverage as a retired (''grey'') reservist, even if not yet receiving retirement pay.

■ 7. Amend § 875.206 by:

■ a. Remove the words ''Federal civilian or Postal employee or member of the uniformed service'' wherever they appear in the section and add, in their place, ''active workforce member''; and

■ b. Revise the section title and paragraphs (a) and (c) to read as follows:

§ 875.206 As a new active workforce member when may I apply?

(a) As a new, newly eligible, or returning active workforce member, you may apply as follows:

(1) If you are a new active workforce member entering a position that conveys eligibility, you may apply for coverage within 60 days after becoming eligible.

(2) If you are entering a position that conveys eligibility as an active workforce member from a position that did not convey eligibility, you may apply for coverage within 60 days after becoming eligible.

(3) If you return to active service after a break in service of 180 days or more to a position that conveys eligibility, you may apply for coverage within 60 days after becoming eligible.

* * * * *

(c) The underwriting requirements that will be required will be those applicable to active workforce members and their spouses during the last open season for enrollment before the date of your application.

* * * * *

■ 8. Amend § 875.208 by adding a new sentence at the end of the paragraph to read as follows:

§ 875.208 May I apply as a qualified relative if the person on whom I am basing my eligibility status has died?

* * * In this case, your adult children and your current spouse are also considered to be qualified relatives.

■ 9. Revise § 875.211 to read as follows:

§ 875.211 What happens if my eligibility status changes after I submit my application?

(a) If you applied as an active workforce member, and separate from service under the MRA+10 provisions of 5 U.S.C. 8412(g), or retire after you submit an application for coverage, but before your coverage becomes effective, you must reapply as an annuitant and submit to full underwriting requirements.

(b) If you applied as an active workforce member, and otherwise separate from service, but you are a qualified relative of another workforce member, you must reapply based on the additional underwriting requirements specified for that type of qualified relative.

■ 10. Amend § 875.402 by adding a new paragraph (c) to read as follows:

§ 875.402 When will open seasons be held?

* * * * *

(c) In situations where new eligibility groups are added to the Program, and OPM determines that it is appropriate to have an open season, OPM will provide notice and set the requirements for a special open season limited to those eligible individuals.

■ 11. Amend § 875.403 by adding a new sentence at the end of the paragraph to read as follows:

§ 875.403 May I apply for coverage outside of an open season?

* * * The only exceptions to the full underwriting requirements outside of an open season are described in § 875.206 and § 875.405.

■ 12. Amend § 875.404 by revising paragraph (b) (2) to read as follows:

§ 875.404 What is the effective date of coverage?

* * * * *

(b) * * *

(2) If you are an active workforce member and you are applying for coverage under abbreviated underwriting, you also must be actively at work at least 1 day during the calendar week immediately before the week which contains your coverage effective date for your coverage to become effective. You must inform the Carrier if you do not meet this requirement. In the event you do not meet this requirement, the Carrier will issue you a revised effective date, which will be the 1st day of the next month. You also must meet the actively at work requirement for any revised effective date for coverage to become effective, or you will be issued another revised effective date in the same manner.

[FR Doc. 05–10642 Filed 5–26–05; 8:45 am]

BILLING CODE 6325–39–P

MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1200 and 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules relating to Board organization in 5 CFR part 1200 to more accurately reflect the Board's staff organization and functions. The Board is also amending its rules of practice and procedure in 5 CFR part 1201 to correct statutory references and to clarify certain matters.

DATES: Effective May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Bentley M. Roberts, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: The Board is amending its rules relating to Board

organization in 5 CFR part 1200 and its rules of practice and procedure in 5 CFR part 1201 as follows:

1200.10(a)(8) and (b)(8) are amended to reflect the fact that the Financial and Administrative Management Division has been re-designated as the Office of Financial and Administrative Management;

1200.10(a)(9) and (b)(9) are amended to reflect the fact that the Information Resources Management Division has been re-designated as the Office of Information Resources Management;

1200.10(b)(8) is amended to reflect the fact that the Board's accounting functions are performed by the U.S. Department of Treasury's Bureau of Public Debt instead of the U.S. Department of Agriculture's National Finance Center;

1201.3(a)(2) is amended to correct a statutory reference by amending ''5 U.S.C. 7512'' to read ''5 U.S.C. 7511–7514'';

1201.3(a)(19) is amended by adding the word ''and'' at the end of the paragraph;

1201.3(a)(20) is deleted because 5 U.S.C. 3592(a)(3) was repealed in Pub. L. 107–296, Title XIII, § 1321(a)(2)(A)(iii), Nov. 25, 2002, 116 Stat. 2297;

1201.3(a)(21) is re-designated as (a)(20) and is amended to correct a statutory reference by deleting ''22 U.S.C. 4011'' and replacing it with ''22 U.S.C. 4010a'';

1201.53(c) is amended to clarify that the Clerk of the Board has authority to rule on requests for exceptions to the payment of costs for a hearing tape recording or transcript made after the initial decision is issued;

1201.56(a)(1)(i) is amended to delete a reference to 5 U.S.C. 3592(a)(3) as that statute was repealed by Pub. L. 107–296, Title XIII, § 1321(a)(2)(A)(iii), Nov. 25, 2002, 116 Stat. 2297;

1201.81(a) is amended to clarify the extent of the Board's subpoena authority under 5 U.S.C. 1204(b)(2)(A);

1201.103(c) is amended to delete a reference to the Board's standards of conduct (the Board has no such standards of conduct);

1201.112(a) is amended to clarify that judges do not have authority to rule on requests for exceptions to the payment of costs for a hearing tape recording or transcript made after the initial decision is issued;

1201.125(c)(1) is amended to add a reference to 5 U.S.C. 7323; and

1201.126(c) is amended to be more clear and to add references to 5 U.S.C. 7323 and 7324.

List of Subjects

5 CFR Part 1200

MSPB organization.

5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

■ Accordingly, the Board amends 5 CFR parts 1200 and 1201 as follows:

PART 1200—[AMENDED]

■ 1. The authority citation for subpart B of part 1200 continues to read as follows:

Authority: 5 U.S.C. 1204(h) and (j).

■ 2. Section 1200.10 is amended by revising paragraphs (a)(8), (a)(9), (b)(8), and (b)(9) to read as follows:

§ 1200.10 Staff organization and functions.

(a) * * *

(8) Office of Financial and Administrative Management.

(9) Office of Information Resources Management.

(b) * * *

(8) Office of Financial and Administrative Management. The Office of Financial and Administrative Management administers the budget, accounting, procurement, property management, physical security, and general services functions of the Board. It also develops and coordinates internal management programs and projects, including review of internal controls agencywide. It performs certain personnel functions, including policy, training, drug testing, and the Employee Assistance Program. It also administers the agency's cross-servicing arrangements with the U.S. Department of Treasury's Bureau of Public Debt for accounting services and with the U.S. Department of Agriculture's National Finance Center for payroll and personnel action processing services and with the U.S. Department of Agriculture's APHIS Business Services for most human resources management services.

(9) Office of Information Resources Management. The Office of Information Resources Management develops, implements, and maintains the Board's automated information systems.

* * * * *

PART 1201—[AMENDED]

■ 3. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701.

■ 4. Section 1201.3 is amended by deleting paragraph (a)(21) and revising paragraphs (a)(2), (a)(19), and (a)(20) to read as follows:

§ 1201.3 Appellate jurisdiction.

(a) * * *

(2) Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service. (5 CFR part 752, subparts C and D; 5 U.S.C. 7511–7514);

* * * * *

(19) Employment practices administered by the Office of Personnel Management to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104); and

(20) Reduction-in-force action affecting a career or career candidate appointee in the Foreign Service (Pub. L. 103–236, § 181(a)(2), to be codified at 22 U.S.C. 4010a).

* * * * *

■ 5. Section 1201.53 is amended by revising paragraph (c) to read as follows:

§ 1201.53 Record of proceedings.

* * * * *

(c) Exceptions to payment of costs. A party may not have to pay for a hearing tape recording or written transcript if he has a good reason to support a request for an exception. If a party believes he has a good reason and the request is made before the judge issues an initial decision, the party must send the request for an exception to the judge. If the request is made after the judge issues an initial decision, the request must be sent to the Clerk of the Board, who shall have authority to grant or deny such requests. The party must clearly state the reason for the request in an affidavit or sworn statement.

* * * * *

■ 6. Section 1201.56 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 1201.56 Burden and degree of proof; affirmative defenses.

(a) * * *

(1) * * *

(i) It is brought under 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence; or

* * * * *

■ 7. Section 1201.81 is amended by revising paragraph (a) to read as follows:

§ 1201.81 Requests for subpoenas.

(a) Request. Parties who wish to obtain subpoenas that would require the attendance and testimony of witnesses, or subpoenas that would require the production of documents or other evidence under 5 U.S.C. 1204(b)(2)(A),

should file their motions for those subpoenas with the judge. The Board has authority under 5 U.S.C. 1204(b)(2)(A) to issue a subpoena requiring the attendance and testimony of any individual regardless of location and for the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia. Subpoenas are not ordinarily required to obtain the attendance of Federal employees as witnesses.

* * * * *

■ 8. Section 1201.103 is amended by deleting paragraph (c)(3) and revising paragraph (c)(2) to read as follows:

§ 1201.103 Placing communications in the record; sanctions.

* * * * *

(c) * * *

(2) Other persons. The Board may invoke appropriate sanctions against other offending parties.

■ 9. Section 1201.112 is amended by revising paragraph (a) to read as follows:

§ 1201.112 Jurisdiction of the judge.

(a) After issuing the initial decision, the judge will retain jurisdiction over a case only to the extent necessary to:

(1) Correct the transcript; when one is obtained;

(2) Rule on a request by the appellant for attorney fees, consequential damages, or compensatory damages under subpart H of this part;

(3) Process any petition for enforcement filed under subpart F of this part;

(4) Vacate an initial decision before that decision becomes final under § 1201.113 in order to accept a settlement agreement into the record.

* * * * *

■ 10. Section 1201.125 is amended by revising paragraph (c)(1) to read as follows:

§ 1201.125 Administrative law judge.

* * * * *

(c) * * *

(1) In a Special Counsel complaint seeking disciplinary action against a Federal or District of Columbia government employee for a violation of 5 U.S.C. 7323 or 7324, where the administrative law judge finds that the violation does not warrant removal, the administrative law judge will issue a recommended decision to the Board in accordance with 5 U.S.C. 557.

* * * * *

■ 11. Section 1201.126 is amended by revising paragraph (c) to read as follows:

§ 1201.126 Final decisions.

* * * * *

(c) In any Hatch Act action in which the administrative law judge, or the Board on petition for review, finds that a Federal or District of Columbia government employee has violated 5 U.S.C. 7323 or 7324 and that the violation warrants removal, the administrative law judge, or the Board on petition for review, will issue a written decision ordering the employee's removal. If the administrative law judge finds a violation of 5 U.S.C. 7323 or 7324 and determines that removal is not warranted, the judge will issue a recommended decision under § 1201.125(c)(1) of this part. If the Board finds a violation of 5 U.S.C. 7323 or 7324 and determines by unanimous vote that the violation does not warrant removal, it will impose instead a penalty of not less than 30 days suspension without pay. If the Board finds by majority vote that the violation warrants removal, it will order the employee's removal.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 05–10652 Filed 5–26–05; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture in order to reflect the Secretary's designation of the General Counsel as the Department official responsible for delegating the authority to other Department heads for considering, ascertaining, adjusting, determining, compromising, and settling, pursuant to the Federal Tort Claims Act (FTCA) and regulations of the Attorney General, claims less than $2500 that allege the negligence or wrongful act of an employee of a certain agency.

DATES: Effective May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Cohen, Assistant General Counsel, General Law Division, Office of the General Counsel, Department of Agriculture, Room 3311–S, Washington, DC 20250, telephone 202–720–5565.

SUPPLEMENTARY INFORMATION: Under 28. U.S.C. 2672 of the FTCA, the head of each Federal agency, including the Secretary of Agriculture, is able to adjudicate FTCA claims brought against his or her respective agency. Furthermore, the FTCA states that an agency may effect a settlement equal to or less than $25,000, without the ''prior written approval of the Attorney General or his designee.'' Through 7 CFR 2.31, the Secretary of Agriculture has delegated to the General Counsel the authority to ''[c]onsider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671–2680), and the regulations of the Attorney General contained in 28 CFR part 14* * *''

The National Performance Review (NPR) determined that this limited delegation posed a barrier to the efficiency and cost-effectiveness of the USDA. Pursuant to the recommendations of NPR, on September 11, 1996, the Secretary of Agriculture enacted a pilot program, created under Secretary's Memorandum 1030-29, by delegating to the Assistant Secretary for Marketing and Regulatory Programs and the Administrator of APHIS the authority to adjudicate claims under $2500 submitted pursuant to the FTCA. The pilot program proved to be highly successful. During this program, adjudication time for this type of FTCA claim was reduced from a period of three to six months to less than two weeks. Additionally, payment processing time was reduced from ten days to as little as one day.

Based on the success of this pilot program, the delegations of authority of the Department of Agriculture are amended so that the General Counsel is now able to delegate the authority to another agency head to consider, ascertain, adjust, determine, compromise, and settle, pursuant to the FTCA and regulations of the Attorney General, claims less than $2500 that allege the negligence or wrongful act of an employee of a particular USDA agency.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12988 and Executive Orders 12866, amended by Executive Order 13258. In addition, this action is not a rule as defined by the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*), and thus is exempt from the provisions of that Act. Finally, this action is not a rule as defined in 5 U.S.C. 804, and thus does not require review by Congress.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

■ Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1), 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

■ 2. Amend § 2.31 to revise paragraph (a) to read as follows:

§ 2.31 General Counsel.

* * * * *

(a) Consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671–2680), and the regulations of the Attorney General contained in 28 CFR part 14; delegate the authority to consider, ascertain, adjust, determine, compromise, and settle, pursuant to the Federal Tort Claims Act as amended (28 U.S.C. 2671–2680) and the regulations of the Attorney General contained in 28 CFR part 14, claims less than $2500 that allege the negligence or wrongful act of an employee of a USDA agency; and consider, ascertain, adjust, determine compromise, and settle claims pursuant to section 920 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127 (7 U.S.C. 2262a).

* * * * *

Dated: April 11, 2005.

Mike Johanns,

Secretary of Agriculture.

[FR Doc. 05–10612 Filed 5–26–05; 8:45 am]

BILLING CODE 3410–14–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 993 and 999

[Docket No. FV05–993–2 IFR]

Dried Prunes Produced in California; Suspension of Handling and Reporting Requirements, Extension of the Suspension of Outgoing Inspection and Volume Control Regulations, and Extension of the Suspension of the Prune Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends indefinitely all remaining handling and most reporting requirements under Marketing Order No. 993, beginning August 1, 2005. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (committee). This rule also indefinitely extends the suspensions of the outgoing inspection and prune import regulations, and volume control regulations, currently temporarily suspended until August 1, 2006, and August 1, 2008, respectively.

DATES: Effective August 1, 2005; comments received by July 26, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or Kathy Finn, Formal Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

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

Summary

This rule suspends handling and reporting requirements under the marketing order and the prune import regulation, beginning with the 2005–2006 crop year, and continuing

indefinitely. These provisions could either be reactivated or terminated. The 2005–2006 crop year begins on August 1, 2005. This action also extends the current temporary suspensions of the outgoing inspection and the volume control regulations. This rule was unanimously recommended by the committee at a meeting on March 15, 2005.

Marketing Order Authority for Suspension

Section 993.90(a) of the prune marketing order provides, in part, that the Secretary ''shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the ''Act.'' Information from the committee, or other sources, may be used by the Secretary in making that determination.

Being cognizant that some growers and packers believe the marketing order has become overly complex and restrictive in today's more technologically-advanced, global market, the committee has held task force meetings over the last two years to solicit input from the industry on amending the order. However, little progress has resulted from those meetings concerning the best method to streamline the existing order and update it to reflect modern packing methods and marketing strategies. Thus, at its meeting on March 15, 2005, the committee voted unanimously to recommend to USDA that the handling and reporting requirements, including the currently-suspended outgoing inspection and volume-control regulations, be suspended indefinitely.

Because the committee would need to obtain information on the tonnage received by each handler to properly allocate committee member and alternate positions, and to assess handlers for their prorata share of expenses, the committee has arranged with the California Department of Food and Agriculture and the California Dried Plum Board (CDPB) to receive such information as needed from the CDPB. The committee would enter into an agreement with the CDPB for this purpose.

On April 16, 2004, the committee approved a motion to submit a request to USDA no later than January 15, 2005, to suspend the marketing order for one year, effective August 1, 2005, through July 31, 2006. At that time, the committee believed that the lead time provided by this recommended suspension permits the industry to consider what portions of the suspended Federal marketing order should be added to the California state marketing order for dried plums.

In accordance with the committee's April 16, 2004, resolution, on December 8, 2004, it recommended to USDA that the marketing order be suspended for one crop year, beginning August 1, 2005, and requested that the current committee members be appointed as trustees during the suspension period.

On February 23, 2005, the Executive Committee reconsidered their recommendation to suspend the entire order and have the current members named as trustees. The Executive Committee made a subsequent recommendation to the committee to rescind the December 8, 2004, recommendation. The Executive Committee then recommended that the handling and reporting requirements be suspended indefinitely, and forwarded that revised recommendation to the full committee, as well. The revised recommendation also included extending the temporary suspensions of outgoing inspection and volume control regulations, which would have ended on August 1 of 2006 and 2008, respectively. As stated earlier, on March 15, 2005, the committee revised its recommendation accordingly.

Prune Import Regulations

Section 8e of the Act provides that when certain domestically-produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule indefinitely suspends the handling regulations, including grade, size, and quality requirements, these requirements will continue to be suspended in the import regulations. Currently, the prune import regulations are suspended through July 31, 2006.

U.S. imports of dried prunes are insignificant compared to U.S. production. In 2002, while the U.S. produced 158,000 tons of dried prunes, only 616 tons were imported. In that year, the domestically-produced tonnage was over 250 times larger than the imported tonnage.

In recent years, as volumes of domestically-produced prunes have fluctuated imports have also fluctuated, but imported prunes continue to represent a very small portion of the available prune products in the U.S. market.

Argentina, Chile, France, Mexico, Iran, and Turkey export prunes to the United States, with Argentina accounting for approximately 90 percent of all U.S. imports.

Handling Requirements

Under the order, §§ 993.48 through 993.59, and § 993.62 authorize requirements upon handlers to meet grade and size requirements, obtain both incoming and outgoing inspection, label prunes appropriately, and hold a portion of the crop in reserve. The order's rules and regulations establish similar requirements.

Currently, the provisions for outgoing inspection and reserve disposition are suspended in both the order and the order's rules and regulations until August 1, 2006, and August 1, 2008, respectively. This rule suspends indefinitely all the remaining handling requirements.

Reporting Requirements

Under §§ 993.71 through 993.75, the order also includes authority to require that handlers file reports with the committee on acquisitions, accountings, holdings, uses, sales, and shipments of prunes. The order's rules and regulations include similar requirements, except that some of these provisions are currently suspended, as they relate to volume control requirements.

This action suspends indefinitely those requirements, along with other handling requirements and the reporting requirements.

As stated previously, the committee would enter into an agreement with the CDPB to collect information necessary for allocating committee member and alternate member positions and for continuing assessments on a limited basis.

A Listing of Marketing Order Provisions To Be Suspended

As noted, handling and reporting requirements will be suspended indefinitely. Included are provisions in the order regarding outgoing inspection and volume control regulations, which are currently temporarily suspended until August 1, 2006, and August 1, 2008, respectively.

In a conforming action, the provisions related to marketing policy are suspended, as well. Under the order, the committee is required to establish a marketing policy annually if handling requirements are recommended. If no handling regulations are recommended due to suspension, no marketing policy statement is required.

Certain provisions and parts of certain provisions are currently suspended until a specified time. This rule will indefinitely suspend those provisions or parts of certain provisions, as well as additional provisions. The following list

of provisions or parts of provisions being suspended are listed below chronologically and notations are made to clarify which provisions or parts of provisions are currently suspended.

Section 993.21d Reserve prunes (currently suspended through 2008).

Section 993.33 Voting procedure (partially suspended through 2008).

Section 993.36(i) Duties (currently suspended through 2008).

Section 993.41 Marketing policy.

Section 993.48 Regulation.

Section 993.49 Incoming regulation.

Section 993.50 Outgoing regulation (partially suspended through 2006).

Section 993.51 Inspection and certification (partially suspended through 2006).

Section 993.52 Modification.

Section 993.53 Above parity situations.

Section 993.54 Establishment of salable and reserve percentages (currently suspended through 2008).

Section 993.55 Application of salable and reserve percentages after end of crop year (currently suspended through 2008).

Section 993.56 Reserve obligation (currently suspended through 2008).

Section 993.57 Holding requirement and delivery (currently suspended through 2008).

Section 993.58 Deferment of time for withholding (currently suspended through 2008).

Section 993.59 Payment to handlers for services (currently suspended through 2008).

Section 993.62 Diversion privileges (currently suspended through 2008).

Section 993.65 Disposition of reserve prunes (currently suspended through 2008).

Section 993.72 Reports of acquisitions, sales, uses, and shipments.

Section 993.73 Other reports.

Section 993.74 Records.

Section 993.75 Verification of reports.

Section 993.97 Exhibit A; minimum standards (partially suspended through 2006).

Section 993.104 Lot.

Section 993.105 Size count.

Section 993.106 In-line inspection.

Section 993.107 Floor inspection.

Section 993.108 Non-human consumption outlet.

Section 993.149 Receiving of prunes by handlers.

Section 993.150 Disposition of prunes by handlers (partially suspended through 2006).

Section 993.156 Application of reserve percentage (currently suspended through 2008).

Section 993.157 Holding and delivery of reserve prunes (currently suspended through 2008).

Section 993.158 Deferment of reserve withholding (currently suspended through 2008).

Section 993.159 Payments for services performed with respect to reserve tonnage prunes (currently suspended through 2008).

Section 993.162 Voluntary prune plum diversion (currently suspended through 2008).

Section 993.165 Disposition of reserve prunes (currently suspended through 2008).

Section 993.172 Reports of holdings, receipts, uses, and shipments (partially suspended through 2008).

Section 993.173 Reports of accounting (partially suspended through 2008).

Section 993.174 Records.

Section 993.400 Modifications.

Section 993.409 Undersized prune regulation for the 2002–03 crop year.

Section 993.501 Consumer package of prunes.

Section 993.503 Size category.

Section 993.504 In-line inspection.

Section 993.505 Floor inspection.

Section 993.506 Lot.

Section 993.515 Size categories (currently suspended through 2006).

Section 993.516 Tolerance and limitations (currently suspended through 2006).

Section 993.517 Identification (currently suspended through 2006).

Section 993.518 Compliance (currently suspended through 2006).

Section 993.601 More restrictive grade regulation (partially suspended through 2006).

Section 993.602 Maximum tolerances.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

An industry profile shows that 8 out of 21 handlers (38 percent) shipped over $6,000,000 worth of dried prunes in 2003 and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped under $6,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,100 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

In addition, there are an estimated 30 importers, and one third-party entity that performs inspections under the order. USDA does not have precise information on these entities, but believes that the majority of the importers and the third-party inspection agency are small entities.

As recommended by the Committee, this rule indefinitely suspends handling and reporting requirements under the marketing order, including extending the temporary suspensions of outgoing inspection requirements and reporting regulations and the import regulations.

Impact of the Regulation

This action reduces the reporting and recordkeeping requirements for California prune handlers and importers; and reduces the committee's, prune handlers'', and prune importers' associated administrative costs. This action also reduces the number of inspections performed by the inspection agency for both handlers and importers.

The benefits of this interim final rule are expected to accrue to all prune handlers and importers regardless of their size.

Alternatives Considered

The deliberations about suspension of the marketing order for one year began at meetings held on April 3 and May 1, 2003, and continued to the present. In April 2004, the committee believed that such a suspension provides the industry with an opportunity to operate without regulation. For some members, a suspension was preferable to termination.

At the December 8, 2004, meeting, the committee discussed the impact of and alternatives to suspending the entire marketing order, and at the February 23,

2005, Executive Committee meeting, the members and industry representatives discussed the impact of and alternatives to suspending handling and reporting requirements, including extending the current suspensions of outgoing inspection requirements and reporting regulations.

At the March 15, 2005, committee meeting, the members received the recommendations of the Executive Committee and, being in unanimous accord, voted to rescind their previous recommendation to suspend the entire order in favor of recommending that the handling and reporting requirements be suspended indefinitely, including the currently-suspended outgoing inspection and volume control regulations.

The suspension permits the industry to operate for an indefinite period of time without most order requirements. This will allow growers and handlers time to consider which provisions in the marketing order might continue to meet their future needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. On the contrary, this action will remove reporting requirements on all prune handlers indefinitely. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this interim final rule.

In addition, the committee's meetings were widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues at any meeting in the last two years, including task force meetings. Like all committee meetings, the April 16 and December 8, 2004, meetings; and the February 23 and March 15, 2005, meetings were public meetings; and all entities, both large and small, were encouraged to express views on this issue. The committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the committee, its Executive Committee, and the marketing order task force, provide broad industry representation. Thus, this rule reflects their considerable deliberations and determinations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

The U.S. Trade Representative has reviewed this interim final rule and concurs with its issuance.

This rule invites comments on changes to the handling and reporting requirements prescribed under the marketing order and the import regulation. Any comments timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (2) these changes relax requirements on handlers and importers; and (3) this rule provides a 60-day comment period and any comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Plums, Prunes, Raisins, Reporting and recordingkeeping requirements, Walnuts.

■ For the reasons set forth in the preamble, 7 CFR parts 993 and 999 are amended as follows:

■ 1. The authority citation for 7 CFR parts 993 and 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 2. In Part 993, §§ 993.21d, 993.41, 993.48, 993.49, 993.50, 993.51, 993.52, 993.53, 993.54, 993.55, 993.56, 993.57, 993.58, 993.59, 993.62, 993.65, 993.72, 993.73, 993.74, 993.75, 993.97, 993.104, 993.105, 993.106, 993.107, 993.108, 993.149, 993.150, 993.156, 993.157, 993.158, 993.159, 993.162, 993.165, 993.172, 993.173, 993.174, 993.400 993.409, 993.501, 993.503, 993.504, 993.505, 993.506, 993.515, 993.516, 993.517, 993.518, 993.601, and 993.602 are suspended indefinitely.

■ 3. In § 993.33, the words ''salable and reserve percentages, and on any matters pertaining to the control or disposition of reserve prunes or to prune plum diversion pursuant to § 993.62'' are suspended indefinitely.

■ 4. Paragraph (i) of § 993.36 is suspended indefinitely.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

■ 5. Section 999.200 is suspended indefinitely.

Dated: May 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agriculture Marketing Service.

[FR Doc. 05–10469 Filed 5–26–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21273; Directorate Identifier 2005–NE–15–AD; Amendment 39–14103; AD 2005–11–01]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 1A Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca S.A. Arrius 1A turboshaft engines. This AD requires initial and repetitive testing of the Free Turbine Overspeed Protection System. This AD results from an investigation into the Digital Electronic Control Unit (DECU) that revealed a malfunction of the Free Turbine Overspeed Protection System. This malfunction can exist despite the DECU passing all functional tests

specified in the Engine Maintenance Manual. We are issuing this AD to prevent uncontained engine failure if a free turbine overspeed occurs.

DATES: Effective June 13, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 13, 2005.

We must receive any comments on this AD by July 26, 2005.

ADDRESSES: Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition might exist on Turbomeca S.A. Arrius 1A turboshaft engines. The DGAC advises that an investigation into the DECU revealed a malfunction of the Free Turbine Overspeed Protection System. This malfunction can exist despite the DECU passing all functional tests specified in the Engine Maintenance Manual. A malfunction of this overspeed system could lead to uncontained engine failure if a free turbine overspeed occurs.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Alert Mandatory Service Bulletin No. A319 77 0804, dated March 24, 2005, that describes procedures for testing the DECU Free Turbine Overspeed Protection System. The DGAC classified this service bulletin as mandatory and issued AD F–2005–063, dated April 27, 2005, and AD UF–2005–063 R1, dated May 4, 2005, in order to ensure the airworthiness of these Arrius 1A engines in France.

Bilateral Airworthiness Agreement

This Turbomeca Arrius 1A engine is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the DGAC kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca Arrius 1A turboshaft engines of the same type design. This AD requires initial testing of the Free Turbine Overspeed Protection System within 25 flight hours of the effective date of the AD, and repetitive testing at each functional test of the DECU Free Turbine Overspeed Protection System. We are issuing this AD to prevent uncontained engine failure in the event of a free turbine overspeed. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2005–21273; Directorate Identifier 2005–NE–15–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2005–NE–15–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2005–11–01 Turbomeca S.A.: Amendment 39–14103. Docket No. FAA–2005–21273; Directorate Identifier 2005–NE–15–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 13, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 1A turboshaft engines. These engines are installed on, but not limited to, Eurocopter AS355N Twinstar helicopters.

Unsafe Condition

(d) This AD results from an investigation into the Digital Electronic Control Unit (DECU) that revealed a malfunction of the Free Turbine Overspeed Protection System can exist despite the DECU passing all functional tests specified in the Engine Maintenance Manual. We are issuing this AD to prevent uncontained engine failure in the event of a free turbine overspeed.

Compliance

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

Initial Testing

(f) Within 25 flight hours after the effective date of this AD, test the DECU Free Turbine Overspeed Protection System, using paragraph 2.B. of the Instructions to be Incorporated of Turbomeca Alert Mandatory Service Bulletin No. A319 77 0804, dated March 24, 2005.

(g) If the DECU Free Turbine Overspeed Protection System fails the test specified in paragraph (f) of this AD, replace the DECU before further flight.

Repetitive Testing

(h) Repeat the testing specified in paragraph (f) of this AD at each functional test of the DECU Free Turbine Overspeed Protection System. Information on the functional tests of the DECU Free Turbine Overspeed Protection System can be found in the Engine Maintenance Manual, Section 77–30–01. Recommended intervals for the functional test of the Turbine Overspeed Protection System can be found in the Engine Maintenance Manual, Section 05–10–02.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) DGAC airworthiness directive F–2005–063, dated April 27, 2005, and UF–2005, 063 R1, dated May 4, 2005, also address the subject of this AD.

Material Incorporated by Reference

(k) You must use Turbomeca Alert Mandatory Service Bulletin No. A319 77 0804, dated March 24, 2005, to perform the tests required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001, on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on May 17, 2005.

Robert E. Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–10295 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19987; Directorate Identifier 2004–NM–203–AD; Amendment 39–14105; AD 2005–11–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This AD requires replacing eight brake fuses of the hydraulic quantity limiter with new or modified and reidentified fuses. This AD is prompted by reports indicating that brake fuses of the hydraulic quantity limiter of the main landing gear have failed. We are issuing this AD to prevent loss of both hydraulic and brake systems if one fuse on each hydraulic system were to fail simultaneously, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective July 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of July 1, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at

the U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Washington, DC. This docket number is FAA–2004–19987; the directorate identifier for this docket is 2004–NM–203–AD.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain McDonnell Douglas Model 717–200 airplanes. That action, published in the **Federal Register** on January 5, 2005 (70 FR 731), proposed to require replacing eight brake fuses of the hydraulic quantity limiter with new or modified and reidentified fuses.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Support for Proposed AD

One commenter supports the proposed AD.

Request to Refer to Vendor Part Numbers

One commenter has no technical objection to the proposed AD, but would like the vendor part numbers to be included with the Boeing part numbers in paragraphs (g) and (h) of the proposed AD. The commenter provided no justification for its request.

We do not agree. Paragraph (g) of the AD refers to Boeing Alert Service Bulletin 717–32A0031, dated September 10, 2004, as the appropriate source of service information for accomplishing the required replacement. Note (a) of paragraph 2.C.1. of the service bulletin identifies the vendor part numbers that correspond to the Boeing part numbers referenced in the AD. Therefore, we find it unnecessary to specify vendor part numbers in either paragraph (g) or (h) of the AD when the referenced service bulletin contains that information. We have made no change to the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 133 airplanes of the affected design in the worldwide fleet and 103 airplanes on the U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane
Option 1. Replacement with new brake fuses	9	$65	No Charge ...	$585
Option 2. Replacement with modified and reidentified brake fuses	13	65	No Charge ...	845

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–11–03 McDonnell Douglas: Amendment 39–14105. Docket No. FAA–2004–19987; Directorate Identifier 2004–NM–203–AD.

Effective Date

(a) This AD becomes effective July 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, fuselage numbers 5002 through 5134 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports indicating that brake fuses of the hydraulic quantity limiter of the main landing gear (MLG) have failed. We are issuing this AD to prevent loss of both hydraulic and brake systems if one fuse on each hydraulic system

were to fail simultaneously, and consequent reduced controllability of the airplane.

Compliance

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

Compliance Times

(f) At the applicable time in Table 1 of this AD, do the action required by paragraph (g) of this AD.

TABLE 1.—COMPLIANCE TIMES

For airplanes having—	Compliance time
(1) Less than 5,000 total flight cycles as of the effective date of this AD	Within 3,600 flight cycles after the effective date of this AD.
(2) 5,000 or more total flight cycles as of the effective date of this AD ..	Within 1,500 flight cycles after the effective date of this AD.

Replacement

(g) Replace the eight brake fuses of the hydraulic quantity limiter by doing either Option 1 or Option 2 in Table 2 of this AD in accordance with Boeing Alert Service Bulletin 717–32A0031, dated September 10, 2004.

TABLE 2.—REPLACEMENT

Option—	Replace eight fuses having part number (P/N) 7918282–5503 with—
1	New fuses having P/N 7918282–5505.
2	Modified and reidentified fuses having P/N 7918282–5505.

Note 1: Boeing Alert Service Bulletin 717–32A0031 refers to Parker Hannifin Corporation Stratoflex Products Division Service Bulletin 836SD–8–6–20, Revision 1, dated June 23, 2004, as an additional source of service information for modifying and reidentifying the brake fuses.

Parts Installation

(h) As of the effective date of this AD, no person may install a brake fuse, P/N 7918282–5503, on any airplane.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 717–32A0031, dated September 10, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_ register/code_of_ federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 16, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10428 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19753; Directorate Identifier 2002–NM–264–AD; Amendment 39–14104; AD 2005–11–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 767–200, –300, and –300F series airplanes. That AD currently requires inspections for fatigue cracking of the horizontal stabilizer pivot bulkhead, and repetitive inspections or other follow-on actions. That action also provides a permanent repair, which is optional for airplanes with no cracks, and, if accomplished, ends the repetitive inspections. For airplanes on which the permanent repair is not installed, this new AD requires repetitive inspections of the same and additional inspection locations at new inspection intervals; a one-time torque test; and related investigative and corrective actions. For airplanes on which the permanent repair is installed, this new AD would require repetitive inspections of the repaired area and, if necessary, corrective action. This AD is prompted by reports of loose tension bolts and crack indications in the fuselage skin. We are issuing this AD to find and fix fatigue cracking of the horizontal stabilizer pivot bulkhead and adjacent structure, which could result in loss of the horizontal stabilizer.

DATES: This AD becomes effective July 1, 2005.

The incorporation by reference of Boeing Alert Service Bulletin 767–53A0078, Revision 3, dated November 15, 2001; and Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002, as listed in the AD is approved by the Director of the Federal Register as of July 1, 2005.

On May 24, 2001 (66 FR 23538, May 9, 2001), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19753; the directorate identifier for this docket is 2002–NM–264–AD.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the

Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2001–09–13, amendment 39–12220 (66 FR 23538, May 9, 2001). The existing AD applies to certain Boeing Model 767–200, –300, and –300F series airplanes. The proposed AD was published in the **Federal Register** on December 1, 2004 (69 FR 69838). That action proposed to require, for airplanes on which the permanent repair is not installed, repetitive inspections of the same and additional inspection locations at new inspection intervals; a one-time torque test; and related investigative and corrective actions. For airplanes on which the permanent repair is installed, that action proposed to require repetitive inspections of the repaired area and, if necessary, corrective action.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request To Revise Compliance Time

Two commenters request that we revise the compliance language in paragraph (n) of the proposed AD to specify that the earlier-occurring threshold determines the compliance time.

We agree that we inadvertently omitted the phrase ''whichever occurs first'' in paragraph (n)(1). We have revised the final rule accordingly.

Request To Include Grace Period

One commenter, an operator, requests that we revise paragraph (n) of the proposed AD to add a grace period to the inspection threshold. The commenter reports that some of its airplanes could exceed the proposed thresholds and would consequently be grounded as of the effective date of the AD. The commenter recommends a grace period of 18 months.

We agree with the request. A substantial portion of the Model 767 fleet has accumulated more than 25,000 total flight cycles, and the cited service bulletin (767–53A0078) for this AD was originally issued October 15, 1998—more than 72 months ago. Therefore, some airplanes indeed could have already exceeded the thresholds in proposed paragraph (n). We find that an 18-month grace period will provide an acceptable level of safety. We have revised the final rule accordingly by adding the grace period in new paragraph (n)(3).

Request To Clarify Certain Requirements

One commenter, an operator, has no objections to the proposed AD but notes a potential discrepancy in certain requirements. The commenter states that paragraphs (l)(1)(ii) and (o) of the proposed AD would require inspection of airplanes that meet certain criteria in the service bulletin but does not specify any requirement for airplanes that do not meet those criteria. The commenter requests that we clarify the proposed AD to address this case.

We agree that clarification might be necessary. Paragraph (l)(1)(i) of this AD is required for all airplanes; paragraph (l)(1)(ii) is an additional action for certain airplanes. Cracking cannot be reliably detected—using the inspections in paragraph (l)—at critical fastener locations hidden by external doublers, rub strips, or wear plates; therefore, the open-hole high frequency eddy current (HFEC) inspections are required only for those airplanes that meet those criteria. For those airplanes, the open-hole HFEC inspections are required in addition to the surface inspections (HFEC, low frequency eddy current, and detailed visual inspections) required by paragraph (l) of this AD. We have revised paragraphs (l)(1)(ii) and (o) of this final rule to include this information for clarification.

Request To Add Authorized Representative

One commenter requests a revision to the section titled ''Difference Between the Proposed AD and the Service Bulletin'' in the preamble of the proposed AD. The commenter requests that we include a reference to the Boeing Airworthiness Representative (AR) in addition to the Designated Engineering Representative (DER).

We partially agree with the request. All active Boeing Company DERs on the Model 767 fleet have been converted to ARs. Although the referenced section of the preamble is not restated in a final rule, we have replaced the DER reference in paragraph (p)(3) of this final rule.

Request for Reformatting

One commenter requests that we revise certain formatting for the paragraph designations in the proposed AD. Specifically, in the proposed requirement to ''[d]o all the actions in paragraph (l)(1),'' the commenter notes the potential confusion between the lower case letter ''L'' and the numeral ''1,'' and suggests that using italics could help the reader differentiate between the two forms.

We agree that certain paragraph designations might be difficult to distinguish. However, the **Federal Register**, which is the medium for notifying the public of official agency actions (including ADs), establishes the formatting requirements for regulations. The proposed AD followed those formatting requirements. We have not changed the final rule regarding this issue.

Explanation of Additional Changes to Proposed AD

We have identified the inspections in paragraph (l)(1) in this final rule as ''detailed'' and ''special detailed'' inspections. New Note 3 in this final rule defines a special detailed inspection.

Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 699 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes
Inspection (required by AD 2001–09–13).	1	$65	None ...	$65 (per inspection cycle)	287.
Inspection and torque check (new action).	4	65	None ...	$260 (per inspection cycle)	287.
Post-modification inspection (new action).	6	65	None ...	$390	Unknown (for those with permanent repair per this AD or AD 2001–09–13).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–12220 (66 FR 23538, May 9, 2001), and by adding the following new airworthiness directive (AD):

2005–11–02 Boeing: Amendment 39–14104. Docket No. FAA–2004–19753; Directorate Identifier 2002–NM–264–AD.

Effective Date

(a) This AD becomes effective July 1, 2005.

Affected ADs

(b) This AD supersedes AD 2001–09–13, amendment 39–12220.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of loose tension bolts and crack indications in the fuselage skin. We are issuing this AD to find and fix fatigue cracking of the horizontal stabilizer pivot bulkhead and adjacent structure, which could result in loss of the horizontal stabilizer.

Compliance

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

Requirements of AD 2001–09–13, Restated

Initial Inspections

(f) Prior to the accumulation of 8,000 total flight cycles, or within 90 days after May 24, 2001 (the effective date of AD 2001–09–13), whichever occurs later, perform detailed, surface high frequency eddy current (HFEC), and low frequency eddy current (LFEC) inspections, as applicable, for cracking of the forward and aft outer chord, aft mid chord, and upper and lower intercostals of the Station 1809.5 bulkhead. Do the inspections per Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001; or Boeing Alert Service Bulletin 767–53A0078, Revision 3, dated November 15, 2001.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repetitive Inspections

(g) For areas where no cracking is found during the inspection per paragraph (f) of this AD: Repeat the inspections in paragraph (f) thereafter at the intervals specified in paragraphs (g)(1) and (g)(2) of this AD, per Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001; or Boeing Alert Service Bulletin 767–53A0078, Revision 3, dated November 15, 2001; until paragraph (i), (l)(1), or (m) of this AD has been done.

(1) Repeat the detailed inspection every 3,000 flight cycles, or 18 months, whichever comes first.

(2) Repeat the surface HFEC and LFEC inspections every 6,000 flight cycles or 36 months, whichever comes first.

Repair and Follow-On Actions

(h) If any cracking is found during any inspection required by paragraph (f) or (g) of this AD, before further flight, repair per paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For cracking of the aft outer chord, aft mid chord, or any intercostal: Repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this

paragraph, the Manager's approval letter must specifically reference this AD.

(2) For cracking of the forward outer chord: Repair per Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001; Boeing Alert Service Bulletin 767–53A0078, Revision 3, dated November 15, 2001; or Revision 4, dated September 26, 2002; except as provided by paragraph (j) of this AD. Procedures for repair include open-hole HFEC inspections for cracking of certain fastener holes of the chord and longeron fitting, detailed inspections for cracking of adjacent structure, and installation of new chords, splices, fairings, and brackets. If the time-limited repair is done per the service bulletin, do a detailed inspection of the repaired area within 1,500 flight cycles or 9 months after installation of the temporary repair, whichever comes first, and do paragraph (h)(2)(i) or (h)(2)(ii) of this AD, per the service bulletin. As of the effective date of this AD, inspect only in accordance with Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002.

(i) If no cracking is found during the inspection of the repaired area: Within 3,000 flight cycles or 18 months after installation of the time-limited repair, whichever comes first, do paragraph (i), ''Permanent Repair,'' of this AD.

(ii) If any cracking is found during the inspection of the repaired area: Before further flight, do paragraph (i), ''Permanent Repair,'' of this AD.

Permanent Repair

(i) Except as provided by paragraph (j) of this AD, installation of the permanent repair of the forward outer chord, including accomplishment of all actions specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001; Boeing Alert Service Bulletin 767–53A0078, Revision 3, dated November 15, 2001; or Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002; terminates the repetitive inspections required by paragraph (g) of this AD. As of the effective date of this AD, install the permanent repair only in accordance with Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002.

Note 2: Installation of the permanent repair before the effective date of this AD in accordance with Boeing Service Bulletin 767–53–0078, dated October 15, 1998; Revision 1, dated September 9, 1999; is acceptable for compliance with paragraph (i) of this AD.

Exception To Repair Instructions

(j) For repairs of the forward outer chord: Where the service bulletin specifies to ask Boeing for repair data, repair per a method approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the repair must meet the certification basis of the airplane, and the Manager's approval letter must specifically reference this AD.

New Requirements of This AD

Initial and Repetitive Inspections, and Torque Test for Airplanes Without the Permanent Repair

(k) For airplanes that have not had the permanent repair installed in accordance with paragraph (i) of this AD, at the later of the times in paragraphs (k)(1) and (k)(2) of this AD, do all the actions in paragraph (l) of this AD.

(1) Within 3,000 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

(2) Prior to the accumulation of 8,000 total flight cycles.

(l) Do all the actions in paragraphs (l)(1) and (l)(2) of this AD in accordance with ''Part 1—Inspection'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002.

(1) Do a detailed inspection and applicable special detailed inspections (*i.e.*, using LFEC and HFEC methods) for cracking of the forward and aft outer chord, splice fitting, aft mid chord, aft intercostal, tension fitting, and fuselage skin, and repeat the applicable inspections at the applicable time in paragraph (l)(1)(i) and (l)(1)(ii) of this AD. This inspection terminates the repetitive inspections required by paragraphs (f) and (g) of this AD.

Note 3: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

(i) Repeat the inspections, except for the open-hole inspections, at intervals not to exceed 3,000 flight cycles until the permanent repair in paragraph (m)(2) of this AD has been done.

(ii) For airplanes that meet the criteria in flag note 1 of Figure 1 of Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002 (close ream fasteners, external doubler, rub strip, or wear plate installed): Repeat the open-hole HFEC inspections for cracking of the forward outer chord, splice fitting, tension fitting, and fuselage skin in Step 7, Figure 2, of the service bulletin at intervals not to exceed 9,000 flight cycles until the permanent repair in paragraph (m)(2) of this AD has been done. The open-hole HFEC inspections are required in addition to the surface inspections (HFEC, LFEC, and detailed visual inspections) required by paragraph (l)(1)(i) of this AD.

(2) Do a one-time torque test and related investigative and corrective actions of the tension bolt at lower stringer 12A. If any corrosion or damage is found in the bolt hole, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Corrective Actions

(m) If any cracking is found during any inspection required by paragraph (l), (n) and (o) of this AD, before further flight, repair in accordance with paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For cracks found during the inspection required by paragraph (n) or (o) of this AD, or for cracks found in the aft outer chord, tension fitting, splice fitting, aft mid chord, or any intercostal: Before further flight, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(2) For cracks in the forward outer chord: Prior to further flight, do the time limited repair in paragraph (h)(2) of this AD, or do the permanent repair in paragraph (i) of this AD. If the time limited repair is done, do the other applicable actions in paragraph (h)(2) of this AD at the times specified in that paragraph. As of the effective date of this AD, only repairs done per Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002, are acceptable for compliance with the requirements of this paragraph.

Repetitive Inspection of Repaired Area

(n) For any airplane on which the permanent repair in paragraph (i) or (m)(2) of this AD is installed, at the latest of the times in paragraphs (n)(1), (n)(2), and (n)(3) of this AD: Do detailed, LFEC, and applicable HFEC inspections of the forward and aft outer chords, tension fitting, splice fitting, and splice angle for cracks; and a detailed inspection of the aft mid chord and aft upper and lower intercostals for cracks. Do the inspections in accordance with ''Part 6—After Modification or After-Repair Inspection Program'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002. Repeat each inspection, except as provided by paragraph (o) of this AD, thereafter at intervals not to exceed 6,000 flight cycles, or 36 months, whichever occurs first.

(1) Within 12,000 flight cycles or 72 months, whichever occurs first, after the repair accomplished in accordance with paragraph (i) or (m)(2) of this AD.

(2) Prior to the accumulation of 25,000 total flight cycles.

(3) Within 18 months after the effective date of this AD.

(o) For any airplane on which the permanent repair in paragraph (i) or (m)(2) of

this AD is installed, and that meets the criteria (close ream fasteners, external doubler, rub strip or wear plate installed) in flag note 1 of Figure 9 of Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002: After the initial inspection in paragraph (n) of this AD, repeat the open-hole HFEC inspection in Step 7 of Figure 10 of the service bulletin, at intervals not to exceed 12,000 flight cycles, or 72 months, whichever occurs first. The open-hole HFEC inspections are required in addition to the surface inspections (HFEC, LFEC, and detailed visual inspections) required by paragraph (n) of this AD.

Alternative Methods of Compliance

(p)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance (AMOCs) for the corresponding provisions of this AD.

(2) AMOCs approved previously per AD 2001–09–13, amendment 39–12220, are approved as AMOCs with the corresponding provisions of this AD.

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

Material Incorporated by Reference

(q) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001; Boeing Alert Service Bulletin 767–53A0078, Revision 3, dated November 15, 2001; and Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 767–53A0078, Revision 3, dated November 15, 2001; and Boeing Alert Service Bulletin 767–53A0078, Revision 4, dated September 26, 2002; is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 767–53–0078, Revision 2, dated April 19, 2001, was approved previously by the Director of the Federal Register as of May 24, 2001 (66 FR 23538, May 9, 2001).

(3) To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 16, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10433 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21315; Directorate Identifier 2005–NM–090–AD; Amendment 39–14106; AD 2005–11–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Airplanes Modified by Supplemental Type Certificate (STC) SA4900SW

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes modified by STC SA4900SW. This AD requires revising the airplane flight manual (AFM) to require repetitive visual checks of the microphone jack assemblies on both control columns to detect damage that may interfere with movement of the control column. This AD also requires modification of the microphone jack assembly, related investigative actions, and corrective actions if necessary, which allows the AFM revision to be removed from the AFM. This AD is prompted by a report of a rejected take-off and subsequent runway overrun due to restricted movement of the co-pilot's control column, which resulted in collapse of the nose landing gear and consequent damage of the forward fuselage. We are issuing this AD to prevent a damaged microphone jack assembly from interfering with movement of the control column, which could result in loss of control of the airplane.

DATES: Effective May 27, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of May 27, 2005.

We must receive comments on this AD by July 26, 2005.

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

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

For service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 3356, Little Rock, Arkansas 72203; or Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21315; the directorate identifier for this docket is 2005–NM–090–AD.

Examining the Docket

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

FOR FURTHER INFORMATION CONTACT: John Hardie, Aerospace Engineer, Special Certification Office, ASW–190, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298; telephone (817) 222–5194; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION: We have received a report indicating that a Bombardier Model CL–600–1A11 (CL–600) airplane experienced a rejected take-off and subsequently overran the runway. The nose landing gear collapsed, and the forward fuselage was damaged as a result of the incident. The

flightcrew reported that, when they attempted to take off, the control column would not move aft beyond the neutral position. Investigation revealed that the microphone jack assembly installed on the co-pilot's control column was bent downward, which restricted the aft movement of the control column. This condition, if not corrected, could result in loss of control of the airplane.

The microphone jack assembly on the affected airplane was installed incidental to Supplemental Type Certificate (STC) SA4900SW. Therefore, we find that all Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes modified by that STC may be subject to the same unsafe condition.

Relevant Service Information

Raytheon has issued Service Bulletin SB 23–3727, dated May 2005. The service bulletin describes procedures for modifying the microphone jack assembly, and performing related investigative actions and corrective actions if necessary. The related investigative actions include performing a general visual inspection of the cover of the pilot's and co-pilot's control columns for cracking around the existing fastener holes for the microphone bracket assembly; a Non-Destructive Test (NDT) of the microphone jack assembly for any damage, including cracks; and a measurement of the distance between existing fastener holes and the location of the new fastener holes. (The service bulletin specifies various alternatives for performing the NDT including dye-penetrant, ultrasonic, and eddy current methods.) The service bulletin specifies to contact Raytheon if any cracking or damage is found, or if the minimum distance between existing and new fastener holes is below a certain limit. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Bombardier Advisory Wire AW600–00–2247, Revision 2, dated March 24, 2005, also addresses the subject of this AD. Section 3.0, Action, of the Advisory Wire recommends a repetitive inspection to ''verify the security of the installation of the [microphone jack] receptacle.'' The intent of this inspection is identical to that of the repetitive visual checks specified in the airplane flight manual (AFM) revision required by paragraph (f) of this AD.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. We have evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are modified by STC SA4900SW and certificated for operation in the United States.

Therefore, we are issuing this AD to prevent a damaged microphone jack assembly from interfering with movement of the control column, which could result in loss of control of the airplane. This AD requires revising the AFM to require repetitive visual checks of the microphone jack assemblies on both control columns to detect damage that may interfere with movement of the control column. We have determined that the checks specified in the AFM revision must be performed by the flightcrew because of the possibility that damage to the microphone jack assembly may occur between the time an inspection is performed by maintenance personnel and the time the flightcrew enters the flight deck to prepare for the flight. (For example, a member of the flightcrew may inadvertently step on the microphone jack assembly, causing it to bend.) We have determined that it is possible for the flightcrew to perform the visual checks because the checks do not require tools, precision measuring equipment, training, or pilot logbook endorsements, or the use of or reference to technical data that are not contained in the body of the AD.

This AD also requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and Service Information,'' after which the AFM revision may be removed from the AFM.

Differences Between the AD and Service Information

Although the Raytheon service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions according to a method approved by the FAA.

The Raytheon service bulletin recommends that the modification of the microphone jack assembly be accomplished before the next flight or within 15 days from receipt of the service bulletin, whichever is first. This AD specifies a compliance time for the modification of 15 flight hours or 15 days after the effective date of the AD, whichever is first. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet. We also considered the recommendation for repetitive inspections in Bombardier Advisory Wire AW600–00–2247, Revision 2. (These repetitive inspections are similar to the repetitive visual checks specified in the AFM revision required by this AD.) In light of all of these factors, we find that, for the modification, a compliance time of 15 flight hours or 15 days, whichever is earlier, represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety, provided that the microphone jack assembly is checked for damage before every flight. We find that this compliance time should provide an opportunity for affected operators to accomplish the modification without unnecessarily grounding airplanes. This difference has been coordinated with Raytheon.

Although the Accomplishment Instructions of the referenced service bulletin describe procedures for reporting accomplishment of the service bulletin, this AD does not require that action. We do not need this information from operators.

Clarification of Service Bulletin Note

The Raytheon service bulletin includes a note in the Accomplishment Instructions to inform operators to contact Raytheon ''should any difficulty be encountered'' in accomplishing the service bulletin. We have included Note 3 in this proposed AD to clarify that any deviation from the instructions provided in the service bulletin must be approved as an alternative method of compliance under paragraph (i) of this proposed AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment;

however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21315; Directorate Identifier 2005-NM–090-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–11–04 Bombardier, Inc. (Formerly Canadair): Amendment 39–14106. Docket No. FAA–2005–21315; Directorate Identifier 2005-NM–090-AD.

Effective Date

(a) This AD becomes effective May 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes; certificated in any category; modified by STC SA4900SW; excluding serial number (S/N) 3025; and including but not limited to the serial numbers listed in Table 1 of this AD.

TABLE 1.—KNOWN AFFECTED S/NS

Model	Known S/Ns
CL–600–1A11 (CL–600)	1054, 1059, 1069, 1071, 1080
CL–600–2A12 (CL–601)	3012, 3013, 3034, 3045, 3050, 3051, 3061, 3065
CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604)	5012, 5046, 5060

Unsafe Condition

(d) This AD was prompted by a report of a rejected take-off and subsequent runway overrun due to restricted movement of the control column, which resulted in collapse of the nose landing gear and consequent damage of the forward fuselage. The FAA is issuing this AD to prevent a damaged microphone jack assembly from interfering with movement of the control column, which could result in loss of control of the airplane.

Compliance

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

Airplane Flight Manual (AFM) Revision

(f) Within 5 days after the effective date of this AD, revise the Limitations and Normal Procedures section of the AFM to contain the following information. This may be done by inserting a copy of this AD in the AFM.

''Before every flight, perform a visual check of the microphone jack assembly on the pilot's and co-pilot's control column to detect damage that may interfere with movement of the control column, including downward bending of the receptacle. This check must be performed by the flightcrew. Any damage that may interfere with the movement of the control column must be repaired before further flight.''

Note 1: Bombardier Advisory Wire AW600–00–2247, Revision 2, dated March 24, 2005, provides additional information on damaged microphone jack assemblies and interference of damaged assemblies with movement of the control column.

Modification

(g) At the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD, modify the microphone jack assembly and do all related investigative actions and applicable corrective actions, in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 23–3727, dated May 2005, except as provided by paragraph (h) of this AD. Once this modification is complete, the AFM revision required by

paragraph (f) of this AD may be removed from the AFM. Although the service bulletin specifies reporting accomplishment of the service bulletin to the manufacturer, this AD does not require that action.

(1) If damage that may interfere with the movement of the control column is found during any visual check performed in accordance with the AFM revision required by paragraph (f) of this AD: Before further flight.

(2) If no damage that may interfere with the movement of the control column is found during any visual check performed in accordance with the AFM revision required by paragraph (f) of this AD: Within 15 days or 15 flight hours after the effective date of this AD, whichever is first.

Repairs

(h) If any cracking is found during any inspection required by this AD, or if the distance between existing and new fastener holes is less than the limit specified in Raytheon Service Bulletin SB 23–3727, dated May 2005, and the service bulletin specifies contacting Raytheon for appropriate action: Before further flight, repair the cracking or do other applicable corrective actions according to a method approved by the Manager, Special Certification Office, ASW–190, FAA. For a repair or corrective action method to be approved by the Manager, Special Certification Office, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Note 2: A note in the Accomplishment Instructions of the Raytheon service bulletin instructs operators to contact Raytheon if any difficulty is encountered in accomplishing the service bulletin. However, any deviation from the instructions provided in the service bulletin must be approved as an alternative method of compliance (AMOC) under paragraph (i) of this AD.

AMOCs

(i) The Manager, Special Certification Office, ASW–190, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) Bombardier Advisory Wire AW600–00–2247, Revision 2, dated March 24, 2005, addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Raytheon Service Bulletin SB 23–3727, dated May 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Raytheon Aircraft Company, P.O. Box 3356, Little Rock, Arkansas 72203; or Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 20, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10536 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No. FAA–2001–11133; Amdt. 65–45]

RIN 2120–AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information regarding the training course design for the repairman certificate (light-sport aircraft) discussed in the preamble of the final rule, ''Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft,'' published in the **Federal Register** of July 27, 2004. The regulatory text addressing this matter was correct and no correction to that text is required.

DATES: The final rule published at 69 FR 44772 (July 27, 2004) was effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Michael W. Brown, Certification and General Aviation Operations Branch Manager (AFS–810), 202–267–8212.

Correction

In final rule FR Doc. 04–16577, beginning on page 44772 in the **Federal Register** of July 27, 2004, make the following correction to the preamble discussion of § 65.107 Repairman certificate (light-sport aircraft): Eligibility, privileges and limits:

■ On page 44849, in the third column, in the 22nd line, the words ''performs a task with supervision'' should have read, ''performs a task without supervision.''

Issued in Washington, DC, on May 20, 2005.

Rebecca B. MacPherson,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 05–10596 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20574; Airspace Docket No. 05–ACE–11]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Chillicothe, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Chillicothe, MO. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Chillicothe, MO.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft department from and executing instrument approach procedures to Chillicothe Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Effective 0901 UTC, July 7, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 12, 2005, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area and to modify other Class E airspace at Chillicothe, MO (70 FR 19027). The proposal was to establish a Class E surface area at Chillicothe, MO. It was also to modify the Class E5 airspace area to bring it into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR

part 71) establishes Class E airspace designated as a surface area for an airport at Chillicothe, MO. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Chillicothe Municipal Airport. Weather observations will be provided by an automatic Weather Observing/Reporting System (AWOS) and communications will be direct with Columbia Automated Flight Service Station.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Chillicothe, MO. An examination of this Class E airspace area for Chillicothe, MO revealed noncompliance with FAA directives. This corrects identified discrepancies by increasing the area from a 6.4-mile to a 6.9-mile radius of Chillicothe Municipal Airport, defining the extension to the airspace area in terms of the Chillicothe nondirectional radio beacon (NDB), modifying the bearing of the extension, correcting errors in the identified location of the Chillicothe NDB and defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Chillicothe Municipal Airport. The airspace area is brought into compliance with FAA directives. Both areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Chillicothe Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Chillicothe, MO

Chillicothe Municipal Airport, MO
(Lat. 39°46′56″ N., long. 93°29′44″ W.)
Chillicothe NDB
(Lat. 39°46′38″ N., long. 93°29′39″ W.)

Within a 4.4-mile radius of Chillicothe Municipal Airport and within 2.5 miles each side of the 335° bearing from the Chillicothe NDB extending from the 4.4-mile radius of the airport to 7 miles northwest of the NDB.

* * * * *

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

* * * * *

ACE MO E5 Chillicothe, MO

Chillicothe Municipal Airport, MO
(Lat. 39°46′56″ N., long. 93°29′44″ W.)
Chillicothe NDB
(Lat. 39°46′38″ N., long. 93°29′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Chillicothe Municipal Airport and within 2.5 miles each side of the 335° bearing from the Chillicothe NDB extending from the 6.9-mile radius of the airport to 7 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO, on May 17, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–10600 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Carprofen

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by IMPAX Laboratories, Inc. The ANADA provides for veterinary prescription use of carprofen caplets in dogs for the relief of pain and inflammation associated with osteoarthritis.

DATES: This rule is effective May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, e-mail: *daniel.benz@fda.gov*.

SUPPLEMENTARY INFORMATION: IMPAX Laboratories, Inc., 30831 Huntwood Ave., Hayward, CA 94544, filed ANADA 200–366 for veterinary prescription use of Carprofen Caplets in dogs for the relief of pain and inflammation associated with osteoarthritis. IMPAX Laboratories, Inc.'s Carprofen Caplets is approved as a generic copy of Pfizer, Inc.'s RIMADYL Caplets, approved under NADA 141–053. ANADA 200–366 is approved as of April 27, 2005, and 21 CFR 520.309 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a

summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 520.309 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 520.309 Carprofen.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (d) of this section.

(1) No. 000069 for use of products described in paragraph (a) of this section as in paragraph (d) of this section.

(2) No. 000115 for use of product described in paragraph (a)(1) of this section as in paragraphs (d)(1), (d)(2)(i), and (d)(3) of this section.

* * * * *

(d) * * *

(2) *Indications for use*—(i) For the relief of pain and inflammation associated with osteoarthritis.

(ii) For the control of postoperative pain associated with soft tissue and orthopedic surgery.

* * * * *

Dated: May 13, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–10627 Filed 5–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF 5F; AG Order No. 2766–2005]

RIN 1140–AA02

Identification Markings Placed on Imported Explosive Materials and Miscellaneous Amendments (2000R–238P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending the current regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to require licensed importers to identify by marking all explosive materials they import for sale or distribution. Licensed manufacturers currently are required to place identification markings on explosive materials manufactured in the United States. Similar marking requirements, however, do not currently exist for imported explosive materials. Identification markings are needed on explosives to help ensure that these materials can be effectively traced for criminal enforcement purposes. Although ATF does not have regulatory oversight over foreign manufacturers, it does have authority over licensed importers of explosive materials. This rule will impose identification requirements on licensed importers of explosive materials that are substantially similar to the marking requirements imposed on domestic manufacturers.

In addition, the final rule incorporates into the regulations the provisions of ATF Ruling 75–35, relating to methods of marking containers of explosive materials. This final rule also amends the regulations to remove the requirement that a licensee or permittee file for an amended license or permit in order to change the class of explosive materials described in their license or permit from a lower to a higher classification.

DATES: This rule is effective July 26, 2005.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8203.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is responsible for implementing Title XI, Regulation of Explosives (18 United States Code (U.S.C.) Chapter 40), of the Organized Crime Control Act of 1970. One of the stated purposes of the Act is to reduce the hazards to persons and property arising from the misuse of explosive materials. Under section 847 of title 18, U.S.C., the Attorney General ''may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.'' Regulations that implement the provisions of chapter 40 are contained in title 27, Code of Federal Regulations (CFR), part 555 (''Commerce in Explosives'').

The term ''explosive materials,'' as defined in 27 CFR 555.11, means explosives, blasting agents, water gels, and detonators. The term includes, but is not limited to, all items in the ''List of Explosive Materials'' provided for in § 555.23. Section 555.202 provides for three classes of explosive materials: (1) High explosives (*e.g.*, dynamite, flash powders, and bulk salutes), (2) low explosives (*e.g.*, black powder, safety fuses, igniters, igniter cords, fuse lighters, and display fireworks (except bulk salutes)), and (3) blasting agents (*e.g.*, ammonium nitrate-fuel oil and certain water gels).

Section 555.109 requires licensed manufacturers of explosive materials to legibly identify by marking all explosive materials manufactured for sale or distribution. The marks required by this section include the identity of the manufacturer and the location, date, and shift of manufacture. This section also provides that licensed manufacturers must place the required marks on each cartridge, bag, or other immediate container of explosive materials for sale or distribution, as well as on the outside container, if any, used for their packaging.

Exceptions to the marking requirements are set forth in § 555.109(b). This section provides that (1) licensed manufacturers of blasting caps are only required to place the required identification marks on the containers used for the packaging of blasting caps, (2) the Director may

authorize other means of identifying explosive materials upon receipt of a letter application from the licensed manufacturer showing that other identification is reasonable and will not hinder the effective administration of part 555, and (3) the Director may authorize the use of other means of identification on fireworks instead of the required markings specified above.

The current regulations do not require the marking of imported explosive materials.

II. Petition—Institute of Makers of Explosives

The Institute of Makers of Explosives (IME) filed a petition with ATF, dated March 7, 2000, requesting an amendment of the regulations to require licensed importers to place the same identification marks on imported explosive materials that are currently required for explosive materials manufactured in the United States. As stated in the petition, IME is the safety association of the commercial explosives industry. Its mission is to promote safety and the protection of employees, users, the public and the environment, and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use, and disposal of explosive materials used in blasting and other operations.

According to the petitioner, commerce in explosives is a global enterprise and it expects the quantity of imported explosives to increase over time. For example, the petitioner stated that between 1994 and 1997, imports of high explosives increased 14-fold to account for approximately 17 percent of all high explosives used annually in the United States. IME further stated that while unmarked high explosives may have entered the United States over the years, it was not until 1999 that the association became aware of significant quantities of unmarked cast boosters being imported into the country. IME contended that, by the end of 1999, about two million unmarked units had been distributed in the United States. The petitioner further stated that many more thousands of tons of these high explosives were expected to be imported into the United States in the near future.

Without a change in the regulations, IME was concerned that these explosives would enter into the commerce of the U.S. without marks of identification, posing significant safety and security risks to the public. Although IME informed ATF that many of its member companies importing explosives into the U.S. mark their imported explosive materials in an effort to ensure the traceability and accountability of the materials, it believes that all imported explosive materials should be appropriately identified. Therefore, it petitioned ATF to amend the Federal explosives regulations.

By letter dated August 2, 2000, IME amended its petition to narrow its scope to importers of high explosives and blasting agents. IME stated that it did not understand that the scope of its initial petition would apply to importers of low explosives. IME noted that it has a specific standard recommending that high explosives and blasting agents be marked with a date/plant/shift code.

III. Advance Notice of Proposed Rulemaking

Based on IME's petition, ATF published in the **Federal Register** on November 13, 2000, an advance notice of proposed rulemaking (ANPRM) requesting information and comments from interested persons on the desirability and feasibility of marking imported explosive materials (Notice No. 906, 65 FR 67669). Although ATF solicited comments on specific questions, it also requested any relevant information on the subject. The comment period for Notice No. 906 closed on January 12, 2001.

In response to Notice No. 906, ATF received three comments. Two commenters argued that licensed importers should place the same or similar identification marks on imported explosive materials that are currently required for explosive materials manufactured in the United States.

The petitioner, IME, submitted the third comment. IME reiterated its position that imported high explosives and blasting agents should contain the same identification markings prescribed in the regulations for domestically manufactured explosives. IME also included an attachment as part of its comment that provided responses to the questions posed by ATF in the advance notice.

IV. Notice of Proposed Rulemaking

On October 16, 2002, after consideration of the comments received in response to Notice No. 906, ATF published in the **Federal Register** a notice proposing to amend the regulations to require licensed importers to identify by marking all imported explosive materials (Notice No. 956, 67 FR 63862). ATF stated its belief that the proposed marking requirements would help ensure that imported explosive materials can be effectively traced for criminal enforcement purposes. ATF also proposed to incorporate into the regulations the provisions of ATF Ruling 75–35, relating to methods of marking containers of explosive materials. In addition, ATF proposed to amend the regulations to remove the requirement that a licensee or permittee file for an amended license or permit in order to change the class of explosive materials described in their license or permit from a lower to a higher classification. The specific regulatory proposals in Notice No. 956 are discussed in the following paragraphs.

A. Amendments to § 555.109

In an effort to protect the public from the misuse of explosive materials, to more easily identify explosive materials, and to successfully trace misused explosive materials or explosive materials used in crimes, ATF proposed to amend § 555.109 to provide that licensed importers and permittees must identify by marking all explosive materials they import for sale or distribution, or import for their own use. The required marks must be legible and in the English language, using Roman letters and Arabic numerals. The marks must identify the importer's or permittee's name and address, the location (city and country) where the explosive materials were manufactured, as well as the date and shift of manufacture. ATF did not propose to require the name of the foreign manufacturer on imported explosives as requested by IME in its comments submitted in response to the advance notice. Instead, ATF proposed to require placement of the name of the importer on the explosive materials because ATF does not have regulatory oversight over foreign manufacturers, particularly with respect to their recordkeeping practices.

As proposed, the required marks must be placed on each cartridge, bag, or other immediate container of explosive materials that are imported, as well as on any outside container used for their packaging. This is consistent with current requirements for domestically manufactured explosives. The proposed regulations also provided that the required marks of identification must be placed on imported explosive materials within 24 hours of release from Customs custody.

In addition, under the proposed regulations, the exceptions to the marking requirements currently specified in the regulations would apply to imported explosive materials as well.

ATF also proposed other amendments to § 555.109. ATF clarified that licensed manufacturers must place the required marks of identification on the explosive

materials at the time of manufacture. ATF also proposed to incorporate into the regulations the provisions of ATF Ruling 75–35 (1975–ATF C.B. 65). This ruling authorizes any method, or combination of methods, for affixing the required marks to the immediate container of explosive materials, or outside containers used for the packaging thereof, provided the identifying marks are legible, show all the required information, and are not rendered unreadable by extended periods of storage. The ruling also provides that where it is desired to utilize a coding system and omit printed markings on the containers, a letterhead application displaying the coding to be used and the manner of its application must be filed by the licensed manufacturer with, and approved by, the Director prior to the use of the proposed coding. Finally, the ruling provides that where a manufacturer operates his or her plant for only one shift during the day, the shift of manufacture need not be shown. Upon the effective date of a final rule in this matter, ATF Ruling 75–35 would be declared obsolete.

B. Miscellaneous Proposals—Amendment of §§ 555.55 and 555.41

Section 555.55 provides that a licensee or permittee who intends to change the class of explosive materials described in his or her license from a lower to a higher classification (e.g., black powder to dynamite) must file an application on ATF Form 5400.13/ATF Form 5400.16 (Application for License or Permit) with the ATF National Licensing Center. If the change in class of explosive materials would require a change in magazines, the amended application must include a description of the type of construction as prescribed in part 555. Business or operations with respect to the new class of explosive materials may not be commenced before issuance of the amended license or amended permit. Finally, upon receipt of the amended license or amended permit, the licensee or permittee must submit his or her superseded license or superseded permit and any copies furnished with the license or permit to the ATF National Licensing Center.

ATF proposed to remove § 555.55. ATF believes that removing this section would provide more flexibility to the explosives industry in terms of the classes of explosive materials involved in their businesses, while not reducing the requirement to store explosive materials in accordance with the regulations contained in subpart K.

Section 555.41 provides general licensing and permit requirements under the Federal explosives laws. Technical amendments were made with respect to § 555.41 in order to be consistent with the proposed amendment of § 555.55.

The comment period for Notice No. 956 closed on January 14, 2003.

V. Notice No. 956—Analysis of Comments and Decisions

ATF received two comments in response to Notice No. 956. Trade associations, the IME (petitioner) and the American Pyrotechnics Association (APA), each submitted comments. IME stated that it represents United States manufacturers of high explosives and other companies that distribute explosives or provide related services. It also stated that over 2.5 million metric tons of explosives are consumed annually in the United States of which IME member companies produce over 95 percent and that the value of its shipments is estimated in excess of $1 billion annually. In addition, the commenter stated that part of its mission is ''to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations.'' IME expressed concerns that the proposed regulations would require different markings for imported and domestically manufactured explosives. It also requested clarification of some of ATF's statements in the proposed rule. IME's concerns and questions are discussed in the following paragraphs.

As stated in its comment, the APA is the principal industry trade association representing manufacturers, importers, and distributors of fireworks in the United States. It has over 260 member companies that are responsible for 90 percent of the fireworks displayed in the United States. The APA stated that while it shares the same public safety concerns as the petitioner (IME) for initiating this rulemaking proceeding, it believes that high explosives and low explosives (*e.g.*, fireworks) should be treated differently for the purposes of marking, recordkeeping, and tracking requirements. The commenter explained that the commercial explosives industry differs in many ways from the fireworks industry:

> Products manufactured, imported and distributed by the commercial explosives industry are intended to function by detonation, and their products are generally stored and shipped in bulk form. * * * the display fireworks industry deals in fireworks classed as 1.3G explosives by the Department of Transportation, which have traditionally been deemed by ATF to be 'low explosives'. These devices, for the large part, function by deflagration. A typical fireworks shipment will consist of numerous different sizes and types of aerial display shells, since there is little demand for a fireworks display consisting of only one color or effect.

The APA raised several concerns regarding the proposed regulations. Those concerns will also be addressed in the following paragraphs.

A. Marking Explosives for Manufacturer's/Importer's Own Use

The current regulations at § 555.109(a) provide that ''[e]ach licensed manufacturer of explosive materials shall legibly identify by marking all explosive materials he manufactures for sale or distribution.'' The proposed regulations specified that licensed manufacturers and licensed importers must identify by marking all explosive materials they manufacture or import for sale, distribution, ''or their own use.'' The proposed regulations also specified that permittees must identify by marking all explosive materials they import for their own use. IME expressed concern that the proposed regulation ''introduces a new requirement for licensees to mark explosives they will simply use, not distribute or sell.'' The commenter stated that it views this new requirement as having an effect on three major aspects of the commercial explosives industry. First, IME stated that manufacturers and importers make or import explosive raw materials that may not be sold or distributed, but will be used to make a finished explosive product. IME supports the marking of these raw materials. In contrast, the APA argued that markings should not be required until the product is completed. It stated that many times an individual firework shell may consist of different pyrotechnic compositions and that it would be impossible for the manufacturer to document and detail the identification requirements for each component of an individual shell. The APA further stated that pyrotechnic compositions are generally made by the manufacturer and then incorporated into the shell. The APA is concerned about the marking of component parts, and the recording of the manufacture and use of said products, prior to assembly into the final product. The APA believes that these requirements would put an undue burden on the manufacturer who typically manufactures the pyrotechnic composition and incorporates it into a final shell the same day. The commenter suggests that only pyrotechnic compositions that will be sold by the manufacturer should be marked.

IME contended that the proposed amendment would also have an effect on the manufacture of experimental explosives. IME stated that manufacturers may make experimental explosives that will be used in tests. It supports marking experimental explosives if they are transported off the property of the manufacturing site. However, IME argues that experimental explosives that do not leave the property of the manufacturing site should not be required to have any markings.

Finally, IME stated that the proposed amendment would require manufacturers of binary explosives to place markings on the mixture. Like experimental explosives, IME argued that binary explosives should only be marked if they are transported off the property of the manufacturing site. The commenter recommended that the final regulations provide an exemption from the marking requirements for experimental and binary explosives that are not transported off the property of the manufacturing site.

Decision

Regarding the marking of manufactured and imported explosive materials that are not sold or distributed but will be used to make a finished explosive product, the Department recognizes the APA's concern and finds that the commenter has raised valid arguments. The Department does not believe that it is necessary to require the marking of pyrotechnic compositions that will be incorporated into a final shell. Such a requirement is unreasonable and would be unduly burdensome to the fireworks industry.

With respect to the marking of experimental and binary explosives, the Department believes that the arguments raised by IME also have merit. The Department recognizes that experimental and binary explosives tend to be manufactured or imported in small quantities and used fairly quickly after manufacture. As such, the Department believes that the possibility that the explosives may be stolen from the site prior to use is minimal. As to binary explosives, it is not feasible and serves no law enforcement purpose to mark explosives manufactured and used the same day at a blasting site.

Accordingly, based on the concerns expressed in the comments, this final rule does not adopt the proposal to require licensed manufacturers, licensed importers, and permittees to identify by marking all explosives they manufacture or import for their own use. Since permittees only import explosives for their own use, the reference to permittees in the final rule has been removed.

B. Name and Address of Importer on Imported Explosives

The proposed regulations provided that imported explosive materials must be marked with the name and address (city and state) of the importer. IME objected to this proposal, arguing that such a requirement ''will eliminate nearly all off-the-shelf purchases of foreign-made explosives and force all imports to be specially made or remarked.'' Furthermore, IME contended that in most cases the cost of manually placing the importer's name and address on off-the-shelf, foreign-made explosives would be prohibitive. IME did not provide any cost estimates concerning these costs. On the other hand, IME acknowledged ATF's need to conduct traces of explosive materials and that ''a trace may be hampered by not knowing where to start the chain-of-custody trace.'' The commenter suggested that ATF require importers to provide identifying information to it on imports that are not marked with the name and address of the importer. If all imports of commercial high explosives or blasting agents were reported to ATF along with the foreign manufacturer's marks of identification, IME estimates that ATF would receive these reports, ''at most, once a week.'' According to IME, ATF could file these reports and reference them to find the importer when needed.

Decision

As noted in the proposed rule, ATF does not have regulatory oversight over foreign manufacturers, particularly with respect to their recordkeeping practices. ATF maintains that the identity (name and address) of the importer is necessary to ensure that explosive materials can be effectively traced for criminal enforcement purposes. Not only would this information be invaluable when conducting a trace, but the name and address of the importer may be key information located during a post-blast investigation. Such markings may identify the source of the explosives used at a bomb scene and may provide valuable leads to solving the crime.

In addition, ATF's experience with tracing imported firearms indicates that relying upon the records of foreign manufacturers for tracing a firearm is ineffective. A significant number of countries either do not require manufacturers of firearms to retain records of production or require record retention for an insufficient period of time. Even where such records are retained and are available to a foreign manufacturer, cooperation of such manufacturers with foreign law enforcement is often sporadic or nonexistent. Thus, when importer's markings are missing, illegible, or inaccurate, ATF is frequently unable to trace a firearm by obtaining assistance from foreign firearms manufacturers. For this reason, ATF regulations implementing the marking requirements of the Gun Control Act of 1968 require importers to mark firearms with their name, city, and State, so that the tracing process begins with their records, rather than those of a foreign manufacturer.

ATF believes that reliance upon the markings of a foreign explosives manufacturer to trace explosives will pose the same problems as explained above in relation to firearms tracing. Accordingly, consistent with regulations in 27 CFR 478.92, this rule imposes a requirement on importers to mark the explosives they import with the name and address of the importer, the location of the foreign manufacturer, and the date and shift of manufacture.

Furthermore, an import report as suggested by IME would hinder ATF's ability to trace misused explosives, particularly in instances where there are multiple importers importing the same products. By having the importer's name and address on the misused product, ATF would not have to go through countless reports to determine the identity of the importer. Creating a tracing system for imported explosives by establishing an ATF database of import reports as suggested by IME would be more burdensome for both the industry and ATF. Instead of requiring the information to be placed on the explosives themselves, as is currently required for domestic explosives, such a system would require the completion of forms that provide detailed information on imported explosives that must be sent to ATF and maintained in a newly created ATF database. More significantly, such a tracing system would be inherently less reliable inasmuch as a mistake by an importer in entering the required information on the form would make a trace difficult or in some instances impossible. Requiring the information to be placed on the explosives would ensure that accurate information is available on the source of imported explosives, just as it is today for domestic explosives, through recovery of marked explosives or recovery of the marked component of the explosives at a crime scene. ATF believes that the ability to trace should be just as robust for imported explosives as it is for domestic explosives.

The Department recognizes that this requirement will add some additional costs to imported explosives that are not properly marked during the manufacturing process. However, IME's comments indicate this would likely be a very small percentage of the market. ATF's experience since 1971 indicates that most imported explosives are manufactured specifically for a particular domestic importer pursuant to a particular contract, rather than importers buying from a ''spot market'' of already existing foreign products. ATF has no specific information concerning the ''spot market'' in foreign explosives referenced in IME comments. If such a ''spot market'' exists, importers can require that the explosives from that market be marked properly in the foreign country prior to shipment in order to reduce the need to mark the explosives when they arrive in the United States. Explosives that arrive in the United States unmarked may be marked at a safe location by the importer after the explosives are released from Customs custody. In any event, ATF believes that the potential costs incurred, approximately 1 cent per pound according to IME, for this small category of imported explosives are outweighed by the law enforcement need to ensure the adequate ability to trace explosives. Accordingly, this final rule adopts the amendment as proposed.

C. Location of Manufacturer on Imported Explosives

The proposed regulations provided that imported explosive materials must be marked with the location (city and country) where the explosives were manufactured. IME objected to this proposal, arguing that it is unable to see the value of such a requirement, ''especially since ATF claims it 'has no regulatory oversight over foreign manufacturers.' ''

Decision

While the Department acknowledges that ATF does not have regulatory oversight over foreign manufacturers, it does have authority over licensed importers of explosive materials. The placement of the identifying marks required by this rule, including the location of the manufacturer, will enable ATF to better trace misused materials by narrowing the search through the importer's records and through Customs documents. It is not uncommon for importers to bring the same product into the United States from a number of foreign sources. Thus, by requiring markings that include the name and location of the foreign manufacturer, ATF will be able to trace explosives more quickly, by asking the importer to locate records only for that particular product manufactured by a particular foreign manufacturer. In addition, Customs entry documents and databases list the country of manufacture. In the event that ATF uses Customs information to determine when a particular explosives product entered the United States, the name of the country of manufacture and name of the manufacturer would greatly assist in identifying the shipment. As previously described, this information on the explosives may also provide valuable leads during a post blast investigation. In addition, this requirement is similar to country of origin markings required under the Customs laws in 19 U.S.C. 1304. Accordingly, this final rule requires that imported explosives be marked with the location (city and country) where the explosive materials were manufactured, which is consistent with the way domestically manufactured explosives are marked, and with markings required for imported firearms under 27 CFR 478.92.

D. Marking Imported Explosives Within 24 Hours of Release From Customs Custody

The proposed regulations specified that imported explosive materials must be marked within 24 hours of the date of release from Customs custody if such explosive materials did not bear the required markings at the time of their release. IME stated that this requirement is impractical for several reasons. First, the commenter noted that most ports of entry do not have locations where the imported explosives could be safely marked and it will often take more than 24 hours for the explosives to reach a safe location for marking. Second, IME stated that even if there were a safe location near the port, most shipments could not be marked in 24 hours. Finally, and according to IME most importantly, ''any grace period exposes unmarked explosives to the risk of theft and degrades the effectiveness of the primary intent of the marking requirement.'' Because of this last concern, IME suggested that ATF require imported explosives to be properly marked prior to entry into the United States, noting that ''[t]his is consistent with the NPRM's requirement that domestic manufacturers place the markings on explosives 'at the time of manufacture.' '' The commenter further stated that ''[t]here should be no concessions made to the security of imported explosives.''

The APA stated that while the fireworks industry generally supports the proposed importer identification requirement, it does not support the proposed timetable for compliance. The commenter reiterated its position regarding the unique circumstances involving the fireworks industry and requested that additional time be provided for marking imported explosives released from Customs custody. The APA provided the following justification for requesting additional time to mark imported explosives:

> Many shipments do not leave the port within 24 hours of customs clearance, let alone get unloaded or checked for labeling. It would be impossible to label each case of fireworks on a container within a 24 hour time period, especially when some companies receive multiple container loads per shipment. Thus, to require individual aerial shells (possibly thousands) to be labeled within a 24 hour time period is not feasible nor in the interest of public safety.

Decision

While the Department shares IME's concern regarding the risk of theft of imported explosives released from Customs custody without the proper identification markings, it disagrees with IME's suggestion that ATF should require imported explosives to be properly marked prior to the time of importation. The Department believes that such a requirement would be overly restrictive and unduly burdensome for importers, particularly small importers. Small importers may not have the financial means to have a run of explosives manufactured bearing their name and address. However, based on the comments, the Department recognizes that the proposed requirement to mark imported explosives within 24 hours of release from Customs custody may be overly restrictive and impractical, particularly with respect to importers who are geographically distant from the point of importation.

Accordingly, this final rule provides that licensed importers must place the required marks on all explosive materials imported prior to distribution or shipment for use, and in no event later than 15 days after the date of release from Customs custody. The Department believes that this is a sufficient amount of time for imported explosives to be marked without posing unnecessary and significant safety and security risks to the public. Furthermore, this is consistent with the marking requirements for imported firearms under 27 CFR 478.112(d). In the event additional time is needed to mark the imported explosives, the importer can request a variance

pursuant to the provisions of 27 CFR 555.22.

Additionally, the Department points out that 27 CFR 555.214(b) requires that ''containers of explosive materials are to be stored so that marks are visible.'' Therefore, all containers of explosive materials placed in storage must have proper marks of identification on the immediate outside containers. The marking of individual internal packages may occur within the 15-day period specified in the regulations.

E. Director Approved Coding System

As proposed, 27 CFR 555.109(c)(4) reads as follows:

If licensed manufacturers, licensed importers or permittees importing explosive materials desire to use a coding system and omit printed markings on the container, they must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used.

IME stated that it is not entirely clear under what conditions a manufacturer or importer must seek the Director's approval for markings and it suggested that ATF ''clarify exactly what conditions invoke the need for the Director's approval of coding systems.'' IME stated that in 1971 its member companies implemented a product identification system for packaged explosives manufactured in the United States. The coding system utilizes a series of alpha and numeric characters to indicate the date, work shift, and location of the manufacturer. It does not indicate the name of the manufacturer. As an example, IME stated that a product manufactured on September 30, 1997, during the first shift at a plant that the manufacturer has assigned the letter ''A'' would be ''30SE97A1.'' IME asked if each licensee or permittee using the standard IME coding system would need the Director's approval. IME also asked if a licensee or permittee using a bar code system would need the Director's approval.

Decision

The current regulations specify that licensed manufacturers must place certain marks of identification on explosive materials they manufacture. The required marks of identification include the name of the manufacturer and the location, date, and shift of manufacture. This information must be legible, identifiable, and understandable. ATF Ruling 75–35 provides, in part, that where it is desired to utilize a coding system and omit printed markings on the container, *i.e.*, stating the information required by § 555.109, a letterhead application displaying the coding to be used and manner of its application must be filed with and approved by the Director. This provision of the ruling was incorporated into the proposed regulations. In response to IME's request that ATF clarify when coding systems are permissible, licensees using IME's coding system or a bar code system must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used. Without an explanation as to the meaning of the coding system, the information would be meaningless and ATF would be unable to trace products marked with such a system. In addition, the Department notes that IME's current coding system fails to provide the name of the manufacturer, and is not consistent with regulations in 27 CFR 555.109. Without the name of the manufacturer, or, in the case of imported explosives, the name of the importer, ATF does not have sufficient information to trace explosives. If industry members seek and obtain approved variances, ATF will have information to decode markings, determine the actual manufacturer or importer, and begin the tracing process. In the event that IME members or other members of the explosives industry are utilizing coding systems to mark domestic products, and such members do not have written approval from ATF to use such markings, the member should immediately apply for an alternate method or procedure pursuant to 27 CFR 555.109.

Accordingly, this final rule clarifies that if licensed manufacturers or licensed importers desire to use a coding system and omit printed markings on the container that show all the required information specified in the regulations, they must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used.

F. Tracking the Acquisition and Disposition of Explosives by Date/Shift Code

The APA expressed concern involving the required tracking of acquisition and disposition of explosive materials by date/shift code. In general, the APA agrees with the proposed markings for each individual aerial shell. It expressed concern, however, with tracking the distribution of shells by the date/shift code. The APA stated that fireworks package displays often contain shells of numerous sizes, colors and date/shift codes and that to track shells by date/shift code would pose an undue and unnecessary recordkeeping burden on industry members. The APA suggested that records of production and distribution for display fireworks should only show the number and size of the aerial shells. The commenter's suggestion is based on its belief that there is a low occurrence of display fireworks used in criminal activity and that most likely the criminal would transfer the explosive material from the shell to another container. Furthermore, the APA suggested that ATF require all shipping cartons of display fireworks to be marked with the name of the manufacturer or distributor and the date that the fireworks were shipped.

Decision

It is the Department's decision that failure to incorporate the date/shift code in the acquisition and disposition records would hinder the effectiveness and purpose of placing the markings on each individual shell. A shell could be traced to the manufacturer or importer but it would be difficult or impossible to trace the shell any further if the records only contained type and count information. The date/shift code is essential in narrowing the records search to the appropriate time period. Manufacturers and importers manufacture and import thousands of the same type of product, so that marking with the date of shipment alone will not narrow the records search to locate a particular explosive within a reasonable time period. When explosives are used in a criminal incident, time is of the essence. Undue delay in identifying the record of acquisition and disposition for a particular explosive product can interfere in investigating bombings and other criminal incidents using explosives. Placing a code of sorts in the shipping carton could offer some assistance, but would not be effective in instances where the shells are no longer in their shipping cartons. Accordingly, the Department is not adopting the APA's suggestion.

G. Computerized Systems for Tracking Explosives

Another concern of the APA relates to computerized systems for tracking explosive materials. The APA stated that it is aware that some companies are currently using, or looking into the implementation of, systems that use bar coding to identify and track their products. The commenter believes that

this technology will continue to expand in use in the fireworks industry and that significantly greater control over the tracking of individual items should become economically feasible within a few years. In the interim, the APA urged ATF to adopt regulations or policies that permit new methods of recordkeeping (including the use of computerized systems) to be implemented by companies without the need to apply for variances.

Decision

The Department believes that the APA has raised a valid concern with respect to the use of computerized systems for tracking explosives. This issue is being addressed in another rulemaking proceeding (see Notice No. 968, January 29, 2003; 68 FR 4406). Until this rulemaking is completed, industry members may seek written authorization from ATF to use computerized recordkeeping systems that utilize bar coding or other computerized systems to streamline the process. As stated above, the use of coded marking requirements may also be approved through the variance process, and can be used in conjunction with a computerized recordkeeping system. The Department believes that the use of computerized recordkeeping systems will not negate the need to maintain the date shift codes in the records.

Miscellaneous Amendments

Section 555.52 provides for limitations on permits and licenses in respect to business activity or permitted operations and specified class of explosives materials allowed. A technical amendment is being made in this final rule with respect to § 555.52 in order to be consistent with the amendments made in §§ 555.55 and 555.41, which are also being adopted as proposed.

VI. ATF Ruling 75–35

This final rule incorporates the provisions of ATF Ruling 75–35 (1975–ATF C.B. 65), relating to methods of marking containers of explosive materials. Accordingly, the provisions of ATF Ruling 75–35 become obsolete upon the effective date of this final rule.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. However, this rule will not have an annual effect on the economy of $100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local or tribal governments or communities. Accordingly, this rule is not an ''economically significant'' rulemaking as defined by Executive Order 12866.

Further, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this regulation justify its costs. The Department believes that the costs associated with compliance with the final regulations are minimal. Comments received in response to the ANPRM and the notice of proposed rulemaking indicate that in all likelihood the foreign manufacturer, rather than the U.S. importer, will place the required marks on explosives that are imported into the United States.

However, some importers may not have the financial means to have a run of explosives manufactured bearing their name and address. ATF estimates that a very small percentage (one percent) of the approximately 413 Federally licensed importers will need to mark imported explosives. In general, the IME stated that marking costs are less than approximately one percent of the product cost, ranging from $.002/lb. to $.01/lb. ATF estimates that approximately five percent of imported explosives would need to be marked. To illustrate, according to the U.S. Census Bureau, approximately 155,240,707 pounds of explosives were imported into the United States in 2003. Based on IME's information, the marking costs associated with 7,762,035 pounds of imported explosives (five percent of 155,240,707 pounds) would range from approximately $15,524 to $77,620.

B. Executive Order 13132

This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Most U.S. importers should not be significantly affected by the final regulations because the foreign-manufactured explosives they import will already be marked in accordance with the provisions of 27 CFR 555.109. ATF estimates that a very small percentage (one percent) of the approximately 413 Federally licensed importers will need to mark imported explosives. In general, the IME stated that marking costs are less than approximately one percent of the product cost, ranging from $.002/lb. to $.01/lb. ATF estimates that approximately five percent of imported explosives would need to be marked. To illustrate, according to the U.S. Census Bureau, approximately 155,240,707 pounds of explosives were imported into the United States in 2003. Based on IME's information, the marking costs associated with 7,762,035 pounds of imported explosives (five percent of 155,240,707 pounds) would range from approximately $15,524 to $77,620. Accordingly, a regulatory flexibility analysis is not required.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1140–0055. 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 the Office of Management and Budget.

The collections of information in this regulation are in 27 CFR 555.109(b)(2). This information is required to properly identify imported explosive materials. The collections of information are mandatory. The likely respondents are businesses.

The estimated average annual burden associated with the collections of information in this final rule is 46 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

Copies of the notice of proposed rulemaking (NPRM), all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890.

Drafting Information

The author of this document is James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

■ Accordingly, for the reasons discussed in the preamble, 27 CFR Part 555 is amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR Part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

§ 555.41 [Amended]

■ 2. Section 555.41 is amended by removing ''of the class authorized by this permit'' at the end of the second sentence in paragraphs (a)(3) and (b)(3)(ii).

§ 555.52 [Amended]

■ 3. Section 555.52 is amended by removing the phrase ''and class (as described in § 555.202)'' in paragraphs (a) and (b).

§ 555.55 [Removed]

■ 4. Subpart D is amended by removing § 555.55.

■ 5. Section 555.108 is amended by adding a new paragraph (e) to read as follows:

§ 555.108 Importation.

* * * * *

(e) For requirements relating to the marking of imported explosive materials, see § 555.109.

■ 6. Subpart F is amended by revising § 555.109 and by adding a parenthetical text at the end of the section to read as follows:

§ 555.109 Identification of explosive materials.

(a) *General.* Explosive materials, whether manufactured in the United States or imported, must contain certain marks of identification.

(b) *Required marks.* (1) *Licensed manufacturers.* Licensed manufacturers who manufacture explosive materials for sale or distribution must place the following marks of identification on explosive materials at the time of manufacture:

(i) The name of the manufacturer; and

(ii) The location, date, and shift of manufacture. Where a manufacturer operates his plant for only one shift during the day, he does not need to show the shift of manufacture.

(2) *Licensed importers.* (i) Licensed importers who import explosive materials for sale or distribution must place the following marks of identification on the explosive materials they import:

(A) The name and address (city and state) of the importer; and

(B) The location (city and country) where the explosive materials were manufactured, date, and shift of manufacture. Where the foreign manufacturer operates his plant for only one shift during the day, he does not need to show the shift of manufacture.

(ii) Licensed importers must place the required marks on all explosive materials imported prior to distribution or shipment for use, and in no event later than 15 days after the date of release from Customs custody.

(c) *General requirements.* (1) The required marks prescribed in this section must be permanent and legible.

(2) The required marks prescribed in this section must be in the English language, using Roman letters and Arabic numerals.

(3) Licensed manufacturers and licensed importers must place the required marks on each cartridge, bag, or other immediate container of explosive materials that they manufacture or import, as well as on any outside container used for the packaging of such explosive materials.

(4) Licensed manufacturers and licensed importers may use any method, or combination of methods, to affix the required marks to the immediate container of explosive materials, or outside containers used for the packaging thereof, provided the identifying marks are legible, permanent, show all the required information, and are not rendered unreadable by extended periods of storage.

(5) If licensed manufacturers or licensed importers desire to use a coding system and omit printed markings on the container that show all the required information specified in paragraphs (b)(1) and (2) of this section, they must file with ATF a letterhead application displaying the coding that they plan to use and explaining the manner of its application. The Director must approve the application before the proposed coding can be used.

(d) *Exceptions.* (1) *Blasting caps.* Licensed manufacturers or licensed importers are only required to place the identification marks prescribed in this

section on the containers used for the packaging of blasting caps.

(2) *Alternate means of identification.* The Director may authorize other means of identifying explosive materials, including fireworks, upon receipt of a letter application from the licensed manufacturer or licensed importer showing that such other identification is reasonable and will not hinder the effective administration of this part.

(Paragraph (b)(2) approved by the Office of Management and Budget under control number 1140–0055)

Dated: May 19, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–10618 Filed 5–26–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP TAMPA 05–062]

RIN 1625–AA00

Safety Zone; Tampa Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters within Tampa Bay, Florida, including Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel. The safety zone is needed to ensure the safety of all mariners from hazards associated with a fireworks display. Entry into this zone is prohibited to all vessels and persons without the prior permission of the Coast Guard Captain of the Port Tampa or designated representative.

DATES: This rule is effective from 8:30 p.m. until 9:20 p.m. on May 29, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP TAMPA 05–062] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Andrew at Marine Safety Office Tampa (813) 228–2191 Ext. 8203.

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. The necessary details for the final date of the fireworks demonstration and the location of the safety zone surrounding it were not provided with sufficient time remaining to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

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

Background and Purpose

Downtown Tampa Attractions Association is scheduled to conduct a fireworks display on May 29, 2005, in Tampa Bay, Florida. This safety zone is being established to ensure the safety of life during the event, as the public is invited to attend the fireworks display, and falling debris may present a danger to life and property.

Discussion of Rule

The safety zone encompasses the following waters within Tampa Bay: Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Tampa or designated representative. The zone is effective from 8:30 p.m. until 9:20 p.m. on May 29, 2005.

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). The Coast Guard expects the impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary, because the safety zone will be in effect for only 50 minuets during a time when vessel traffic is limited. Moreover, vessels may enter the zone with the express permission of the Captain of the Port Tampa or designated representative.

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 Sparkman Channel, Garrison Channel (east of the Beneficial Bridge), Ybor Turning Basin, and Ybor Channel from 8:30 p.m. until 9:20 p.m. on May 29, 2005. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 50 minutes late in the evening when vessel traffic is extremely low. Additionally, traffic will be allowed to enter the zone with the permission of the Coast Guard Captain of the Port Tampa or designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

Small Businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, 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. This rule is a safety zone and therefore fits the category described in paragraph (34)(g). 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 § 165.T07–147 to read as follows:

§ 165.T07–147 Safety Zone; Tampa Bay, Florida.

(a) *Regulated area.* The following area is a safety zone: The waters of Garrison Channel east of an imaginary line connecting point 1: 27°56′32″ N, 082°27′58″ W; south to point 2: 27°56′27″ N, 082°27′58″ W; and including Ybor Turning Basin, Ybor Channel, and all waters in Sparkman Channel north of an imaginary line connecting point 3: 27°55′32″ N, 082°26′55″ W, east to point 4: 27°55′32″ N, 082°26′47″ W.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all vessels and persons without the prior permission of the Coast Guard Captain of the Port Tampa or designated representative.

(c) *Date.* This rule is effective from 8:30 p.m. until 9:20 p.m. on May 29, 2005.

Dated: May 11, 2005.

J.M. Farley,

Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.

[FR Doc. 05–10588 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–050]

RIN 1625–AA00

Safety Zone; Wantagh Parkway 3 Bridge Over the Sloop Channel, Town of Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period of a safety zone in the waters surrounding the Wantagh Parkway Number 3 Bridge across the Sloop Channel in Town of Hempstead, New York. This change will extend the effective period of the temporary final rule until December 31, 2005, allowing time for the completion of the bascule bridge being constructed over the Sloop Channel. This rule will continue to prevent vessels from transiting the Sloop Channel within 300 yards of the Wantagh Parkway Number 3 Bridge and continues to be necessary in order to protect vessels transiting in the area from hazards imposed by construction barges and equipment. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, Connecticut.

DATES: The extended period of § 165.T01–155 is effective from 12 a.m. on June 1, 2005 until 11:59 p.m. on December 31, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–05–050 and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Chief, Waterways Management Division, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 12, 2005 we published a temporary final rule (TFR entitled ''Safety Zone: Wantagh Parkway 3 Bridge Over the Sloop Channel, Town of Hempstead, NY'' in the **Federal Register** (70 FR 2017). The effective period for this rule was from 12:01 a.m. on January 1, 2005 until 11:59 p.m. on May 31, 2005. We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3) and 553 (d)(3) the Coast Guard finds that good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication.

Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to restrict and control maritime traffic transiting in the vicinity of the Sloop Channel under the Wantagh Parkway Number 3 Bridge in the Town of Hempstead, Nassau County, Long Island, New York. In 2003, the Coast Guard approved bridge construction and issued a permit for bridge construction for the Wantagh Parkway Number 3 Bridge over the Sloop Channel. Contractors began work constructing the two bascule piers for the new bridge in early June 2004. A safety zone was not deemed necessary at the inception of the construction, as this channel is primarily used by smaller recreational vessels, which could maneuver outside of the channel. However, bridge construction equipment that remains under the Wantagh Parkway Number 3 Bridge poses a potential hazard greater than originally anticipated. A safety zone was deemed necessary and was established on October 9, 2004 through December 31, 2004, the date when construction impacting the navigable channel was estimated to be complete. A second safety zone was implemented from January 1, 2005 until May 31, 2005, after the New York State Department of Transportation advised the Coast Guard that construction of the Wantagh Parkway Number 3 Bridge was experiencing delays, requiring equipment to be in the channel in a manner that would leave the waterway unsafe to marine traffic until May 31, 2005. In a letter dated April 8, 2005, the New York State Department of Transportation (NYSDOT) again requested an extension of the safety zone surrounding in the Sloop Channel until December 31, 2005. The contractor for this project has experienced significant delays in bridge construction. In order to continue construction in a more rapid and safe manner, barges will need to continuously block the channel under the bridge.

The delay inherent in the NPRM process is contrary to the public interest and impracticable, because immediate action is needed to extend this safety zone to continue to prevent accidents by vessels transiting the area with the construction equipment. This is acutely necessary during the summer months, when recreational traffic will significantly increase in this area.

Background and Purpose

Currently, there is a fixed bridge, the Wantagh Parkway Number 3 Bridge over the Sloop Channel in the Town of Hempstead, New York. New York Department of Transportation determined that a moveable bridge would benefit the boating community. In 2003, the Coast Guard approved bridge construction and issued a permit for bridge construction for the Wantagh Parkway Number 3 Bridge over the Sloop Channel. Contractors began work constructing the two-bascule piers for the new bridge in early June 2004. The equipment necessary for the construction of the bridge occupies the entire navigable channel. While there are side channels, which can be navigated, the equipment in the channel is extensive and poses a hazard to recreational vessels attempting to transit the waterway via the side channels under the bridge. Construction, requiring equipment in the navigable channel, was originally scheduled to end on December 31, 2004. A second safety zone was established until May 31, 2005 after the Coast Guard was notified that the project had experienced delays in construction. Significant additional delays in construction require this equipment to occupy the navigable channel until December 31, 2005. To ensure the continued safety of the boating community, the Coast Guard is extending the safety zone in place in all waters of the Sloop Channel within 300 yards of the bridge. This safety zone is necessary to protect the safety of the boating community who wish to utilize the Sloop Channel. Marine traffic may transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Sloop Channel, except the portion delineated by this rule.

Discussion of Rule

This regulation extends the effective period of a temporary safety zone on the waters of the Sloop Channel within 300-yards of the Wantagh Parkway Bridge. This action is intended to prohibit vessel traffic in a portion of the Sloop Channel in the Town of Hempstead, New York to provide for the safety of the boating community due to the hazards posed by significant construction equipment and barges located in the waterway for the construction of a new bascule bridge. The safety zone is being extended until 11:59 p.m. on December 31, 2005. Marine traffic may continue to transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Sloop Channel, except the portion delineated by this rule. Vessels may utilize the Goose Neck Channel as an alternative route to using the Sloop Channel, adding minimal additional transit time. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

Any violation of the safety zone described herein is punishable by, among others, civil and criminal

penalties, in rem liability against the offending vessel, and license sanctions.

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 will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: Vessels may transit in all areas of the Sloop Channel and other than the area of the safety zone, and may utilize other routes with minimal increased transit time.

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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of the Sloop Channel in the Town of Hempstead, New York covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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 affect 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 will not concern 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 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action, therefore it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226 and 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. Revise temporary § 165.T01–155(b) to read as follows:

§ 165.T01–155 Safety Zone: Wantagh Parkway Number 3 Bridge over the Sloop Channel, Town of Hempstead, NY.

* * * * *

(b) *Effective date.* This section is effective from 12:01 a.m. on January 1, 2005 until 11:59 p.m. on December 31, 2005.

* * * * *

Dated: May 18, 2005.

Peter J. Boynton,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 05–10591 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 03–002]

RIN 1625–AA00

Safety Zone; Offshore Marine Terminal, El Segundo, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone surrounding the El Segundo offshore marine terminal near Los Angeles, California. This action is necessary to ensure public safety and reduce the likelihood of a collision or other casualty involving a tank vessel moored at the offshore marine terminal. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: This rule is effective June 27, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Los Angeles-Long Beach 03–002 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, Waterways Management Division, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Peter Gooding, Chief of Waterways Management Division, (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 10, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Offshore Marine Terminal, El Segundo, CA'' in the **Federal Register** (68 FR 41091). We received nine letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Chevron Texaco Shipping Company requested that the Coast Guard establish a safety zone around the El Segundo offshore marine terminal near Los Angeles, California, to promote the safety of life and property at the facility and on the adjacent waters within the safety zone—including tank vessels and their crews, their apparatuses, and attending vessels and their crews.

El Segundo offshore marine terminal is located approximately 1 nautical mile offshore El Segundo in Santa Monica Bay, between Marina Del Rey and Redondo Beach, California. The offshore marine terminal consists of several tanker mooring buoys and seafloor pipelines connected to the mainland terminal. Large tank vessels are secured to tanker mooring buoys using multiple sets of mooring lines. Underwater pipelines that extend seaward from the mainland terminal rise up from the ocean bottom and are secured to both the buoys and the tankers. As a result, there are numerous mooring lines, pipelines, and other critical apparatuses that exist above, below, and on the surface of the water presenting an especially hazardous condition for other vessels transiting through this area. The hazards have contributed to vessel casualties resulting in pollution and in at least one case, a fatality. These conditions are present at all times, whether or not a tanker is in the offshore marine terminal.

Discussion of Comments and Changes

The Coast Guard received a total of nine letters in response to the notice of proposed rulemaking. What follows is a review of, and the Coast Guard's response to, the issues and questions that were presented by these commenters concerning the proposed regulations.

(1) Four commenters indicated that buoys should be placed at the corners of the safety zone to give a visual indication to boaters passing nearby.

The National Oceanic and Atmospheric Administration (NOAA) publishes charts of this area. A notation of the safety zone will be placed on the chart to advise mariners of the safety zone. In addition, NOAA is publishing a new chart for the El Segundo area that will show much greater detail of the surrounding area. This chart should provide sufficient aid for boaters to identify the safety zone without the placement of buoys which may interfere with vessels permitted to enter the zone.

(2) Two commenters indicated that publication of the safety zone needed to be widespread to ensure boaters are aware of the new zone.

In addition to appearing in the **Federal Register**, news of this safety zone will be published in the Notice to Mariners, Coast Pilot, and local boating publications to ensure wide dissemination of information about this safety zone.

(3) Two commenters indicated that the enforcement of the safety zone would not be adequate to keep vessels out of the zone.

As stated in the Background and Purpose section above, this zone is for the safety of the vessels transiting in the vicinity of the offshore moorings. It is not envisioned that enforcement of the safety zone will be a heavy burden on the Coast Guard.

(4) One commenter indicated that the safety zone should only be in place while tank vessels are present.

The presence of large mooring buoys, approximately 13 feet long and 6 feet in diameter, are hazardous to vessels operating in this area. These conditions are present at all times, whether or not a tanker is in the offshore marine terminal.

(5) One commenter indicated that the size of the safety zone should be larger than proposed and that it should extend to shore.

We feel as though the area prescribed is large enough to provide safe operations, while allowing a corridor for vessels to safely pass between the safety zone and the shoreline.

After reviewing all comments, we made no changes in the rule. Our final rule remains the same as our proposed rule.

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 safety zone will encompass only a small portion of the waterway and vessel traffic can pass safely around the affected area. In addition, vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port.

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. We expect this rule will affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in Santa Monica Bay near El Segundo. The impact to these entities will not, however, be significant since this zone encompasses a small portion of the waterway and vessels may safely pass around the affected area. In addition, vessels may be allowed to enter this zone on a case-by-case basis with permission of the Captain of the Port.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1156 to read as follows:

§ 165.1156 Safety Zone; Offshore Marine Terminal, El Segundo, CA.

(a) *Location.* The following area is a safety zone: All waters of Santa Monica Bay, from surface to bottom, enclosed by a line beginning at latitude 33°54′59″ N, longitude 118°26′50″ W; then to latitude 33°54′59″ N, longitude 118°27′34″ W; then to latitude 33°54′00″ N, longitude 118°27′34″ W; then to latitude 33°54′00″ N, longitude 118°26′50″ W; then to the point of beginning (NAD 1983).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited except for:

(i) Commercial vessels authorized to use the offshore marine terminal for loading or unloading;

(ii) Commercial tugs, lighters, barges, launches, or other vessels authorized to engage in servicing the offshore marine terminal or vessels therein;

(iii) Public vessels of the United States.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 1–800–221–8724 or on VHF–FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the Navigation Rules as defined in 33 CFR chapter I, subchapters D and E and safe navigation practice.

Dated: May 13, 2005.

Peter V. Neffenger,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles–Long Beach.

[FR Doc. 05–10594 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1199–IFC]

RIN 0938–AN87

Medicare Program; Electronic Submission of Cost Reports: Revision to Effective Date of Cost Reporting Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period revises the existing effective date by which all organ procurement organizations (OPOs), rural health clinics (RHCs), Federally qualified health centers (FQHCs), and community mental health centers (CMHCs) are required to submit their Medicare cost reports in a standardized electronic format from cost reporting periods ending on or after December 31, 2004 to cost reporting periods ending on or after March 31, 2005.

This interim final rule with comment does not affect the current cost reporting requirement for hospices and end-stage renal disease (ESRD) facilities. Hospices and ESRD facilities are required to continue to submit cost reports under the Medicare regulations in a standardized electronic format for cost reporting periods ending on or after December 31, 2004.

DATES: *Effective date:* These regulations are effective on June 27, 2005.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 26, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1199–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1199–IFC, P.O. Box 8018, Baltimore, MD 21244–8018.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7197 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. All comments received before the close of the comment period are available for viewing by the public, including any

personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public Web site.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Darryl E. Simms, (410) 786–4524.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1199-IFC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on its public Web site as soon as possible after they are received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

On August 23, 2003, we published in the **Federal Register** (68 FR 50717), a final regulation that requires that all hospices, organ procurement organizations (OPOs), rural health clinics (RHCs), Federally qualified health centers (FQHCs), community mental health centers (CMHCs), and end-stage renal disease (ESRD) facilities submit Medicare cost reports in a standardized electronic format. This requirement is effective for cost reporting periods ending on or after December 31, 2004.

The provider's electronic program must be capable of producing the CMS standardized output file in a form that can be read by the fiscal intermediary's automated system. This electronic file, which must contain the input data required to complete the cost report and to pass specified edits, must be forwarded to the fiscal intermediary for processing through its system.

These facilities are generally paid under the Medicare program for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Sections 1815(a) and 1833(e) of the Social Security Act (the Act) provided that no payments will be made to a provider unless it has furnished the information, requested by the Secretary of the Department of Health and Human Services (Secretary), needed to determine the amount of payments due the provider.

In general, providers submit this information through cost reports that cover a 12-month period. Regulations governing the submission of cost reports are set forth in § 413.20 and § 413.24. Section 413.20(a) specifies that all providers participating in the Medicare program are required to maintain sufficient financial records and statistical data for proper determination of costs payable under the Medicare program. In addition, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry and related fields. In § 413.20(b) and § 413.24(f), providers are required to submit cost reports annually, with the reporting period based on the provider's accounting year. Section 412.52 specifies that all hospitals participating in the prospective payment system must meet cost reporting requirements set forth at § 413.20 and § 413.24.

Section 1886(f)(1)(B)(i) of the Act requires the Secretary to establish a standardized electronic cost reporting system for all hospitals participating in the Medicare program. This provision was effective for hospital cost reporting periods beginning on or after October 1, 1989. On January 2, 1997, we published a final rule in the **Federal Register** (62 FR 26) that revised § 413.24(f)(4)(ii) to extend the electronic cost reporting requirements to skilled nursing facilities (SNFs) and home health agencies (HHAs).

The required cost reports must be electronically transmitted to the intermediary in American Standard Code for Information Interchange (ASCII) format. In addition to the electronic file, hospitals, SNFs, and HHAs were initially required to submit a hard copy of the full cost report. The January 2, 1997 final rule revised § 413.24(f)(4)(iv) to state that providers were required to submit, instead, a hard copy of a one-page settlement summary, a statement of certain worksheet totals found in the electronic file, and a statement signed by the provider's administrator or chief financial officer certifying the accuracy of the electronic file. To preserve the integrity of the electronic file, in the January 2, 1997 final rule we specified procedures regarding the processing of electronic cost reports once they are submitted to the intermediary.

II. Provisions of the Interim Final Rule

This interim final rule revises the existing effective date for submission of electronic cost reports for OPOs, RHCs, FQHCs, and CMHCs from cost reporting periods ending on or after December 31, 2004 to cost reporting periods ending on or after March 31, 2005. As a result of the delays in the availability of the CMS free cost reporting software and commercially available cost reporting software, OPOs, RHCs, FQHCs, and CMHCs will now be required to file their cost reports in a standardized electronic format effective for cost reporting periods ending on or after March 31, 2005. This is a change from the August 23, 2003 final rule that established the electronic filing requirement for cost reporting periods ending on or after December 31, 2004.

Hospices and ESRD facilities will continue to be subject to the electronic filing requirements as referenced in the August 23, 2003 final rule as software for these provider types is available. Therefore, all hospices and ESRD facilities are still required to submit standardized electronic cost reports for cost reporting periods ending on or after December 31, 2004. Standardized electronic cost reports have been in place since October 1989. Since that time, the accuracy of cost reporting has increased. Under this interim final rule, the only change is to the effective date for submission of electronic cost reporting for OPOs, RHCs, FQHCs, and CMHCs. These providers will still be given a transition period (described in the August 23, 2003 final rule (68 FR 50717)) beginning with the new effective date and are still required to provide a hard copy of the settlement summary, statement of certain worksheet totals, and a statement signed by the administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report under the new effective date.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of

this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Because of the delay in the availability of the requisite cost reporting software (CMS-provided and commercially available) needed to comply with the effective date provisions of the August 23, 2003 final rule, OPOs, RHCs, FQHCs, and CMHCs are not able to submit cost reports in a standardized electronic format for cost reporting periods ending December 31, 2004. These cost reports are due to their respective fiscal intermediaries (FIs) 150 days or 5 months following the close of the cost reporting period which is May 31, 2005. Revising the reporting requirement to be effective for cost reporting periods ending on or after March 31, 2005, provides the time for the contractors to develop the requisite cost reporting software. The new electronic filing requirement for cost reporting periods ending on or after March 31, 2005 requires OPOs, RHCs, FQHCs, and CMHCs, with a March 31, 2005 cost reporting ending date to submit cost reporting data to FIs by August 31, 2005. We find the notice-and-comment procedure impracticable since it is not feasible for these providers to meet the current effective date as the technology to meet the reporting requirement is not available. Also, this interim final rule with comment does not impose any additional requirements, but merely extends the effective date of the existing reporting requirement until the software is available. Therefore, we find good cause to waive notice-and-comment procedures and to issue this final rule on an interim basis. However, we are providing a 60-day public comment period.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. However, the requirements referenced and discussed below are currently approved by OMB.

Section 413.24 Adequate Cost Data and Cost Finding

Currently § 413.24 requires hospitals, to submit cost reports in a standardized electronic format for cost reporting periods beginning on or after October 1, 1989. SNFs, and HHAs must submit cost reports in a standardized electronic format for cost reporting periods ending on or after December 31, 1996. Hospices, ESRD facilities, OPOS, RHCs, FQHCs and CMHCs must submit cost reports in a standardized electronic format for cost reporting periods ending on or after December 31, 2004. These reporting requirements are currently approved as described below.

This interim final rule revises the dates by which OPOs, RHCs, FQHCs, and CMHCs must submit cost reports in a standardized electronic format. Under the revised requirements OPOs, RHCs, FQHCs, and CMHCs must now submit cost reports in a standardized electronic format for cost reporting periods ending on or after March 31, 2005, rather than December 31, 2004. This change does not impose any new burden.

As noted above, while all the above reporting requirements are subject to the PRA, they are currently approved under OMB approval numbers 0938–0050, ''Hospital/Healthcare Complex Cost Report,'' with a current expiration date of November 30, 2005, 0938–0463; ''Skilled Nursing Facility Cost Report,'' with a current expiration date of April 30, 2007; 0938–0022, ''Home Health Agency Cost Report,'' with a current expiration date of April 30, 2007; 0938–0758, ''Hospice Cost Report,'' with a current expiration date of January 31, 2008; 0938–0102, ''Organ Procurement Agency/Laboratory Statement of Reimbursable Costs,'' with a current expiration date of August 31, 2006; 0938–0107, ''Independent Rural Health Clinic/Freestanding Federally Qualified Health Center Cost Report,'' with a current expiration date of October 31, 2005; 0938–0236, ''Medicare Independent Renal Dialysis Facility Cost Report,'' with a current expiration date of June 30, 2007; and 0938–0657, ''End Stage Renal Disease Network Cost Report,'' with a current expiration date of September 30, 2006.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Jim Wickliffe, CMS–1199–IFC, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, CMS Desk Officer, CMS–1199–IFC, *Christopher_Martin@omb.eop.gov,* Fax (202) 395–6974.

VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a

significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395dd(d), 1395f(b), 1395g, 1395l(a), (i) and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart B—Accounting Records and Reports

■ 2. Section 413.24 is amended by—
■ A. Revising paragraph (f)(4)(ii).
■ B. Revising paragraph (f)(4)(iv).
The revisions read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(f) * * *

(4) * * *

(i) * * *

(ii) Effective for cost reporting periods beginning on or after October 1, 1989 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, cost reporting periods ending on or after December 31, 2004 for hospices, and end-stage renal disease facilities, and cost reporting periods ending on or after March 31, 2005 for organ procurement organizations, rural health clinics, Federally qualified health centers, and community mental health centers, a provider is required to submit cost reports in a standardized electronic format. The provider's electronic program must be capable of producing the CMS standardized output file in a form that can be read by the fiscal intermediary's automated system. This electronic file, which must contain the input data required to complete the cost report and to pass specified edits, must be forwarded to the fiscal intermediary for processing through its system.

* * * * *

(iv) Effective for cost reporting periods ending on or after September 30, 1994 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, cost reporting periods ending on or after December 31, 2004 for hospices and end-stage renal disease facilities, and cost reporting periods ending on or after March 31, 2005 for organ procurement organizations, rural health clinics, Federally qualified health centers, and community mental health centers, a provider must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. During a transition period (first two cost-reporting periods on or after December 31, 2004 for hospices and end-stage renal disease facilities, and the first two cost-reporting periods on or after March 31, 2005 for organ procurement organizations, rural health clinics, Federally qualified health centers, community mental health centers) providers must submit a hard copy of the completed cost report forms in addition to the electronic file. The following statement must immediately precede the dated signature of the provider's administrator or chief financial officer:

> I hereby certify that I have read the above certification statement and that I have examined the accompanying electronically filed or manually submitted cost report and the Balance Sheet Statement of Revenue and Expenses prepared by _____ (Provider Name(s) and Number(s)) for the cost reporting period beginning ___ and ending ___ and that to the best of my knowledge and belief, this report and statement are true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

* * * * *

(Catalog of Federal Domestic Assistance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 14, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 3, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–10570 Filed 5–26–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7569]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be

calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as shown below:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Florida: Charlotte	Unincorporated Areas.	January 27, 2005; February 3, 2005; *Sun Herald*.	Mr. Bruce A. Loucks, Charlotte County Administrator, Charlotte County Administration Building, 18500 Murdock Circle, Port Charlotte, Florida 33948.	January 20, 2005	120061 F
Georgia: Richmond.	City of Augusta ..	February 10, 2005; February 17, 2005; *The Augusta Chronicle*.	The Honorable Robert Young, Mayor of the City of Augusta, City-County Building, 530 Greene Street, Augusta, Georgia 30911.	May 19, 2005	130159
Massachusetts: Barnstable.	Town of Chatham.	February 3, 2005; February 10, 2005; *Cape Cod Times*.	Mr. William G. Hinchey, Chatham Town Manager, 549 Main Street, Chatham, Massachusetts 02633.	January 27, 2005	250004 D
Minnesota: Hennepin.	City of Minneapolis.	January 21, 2005; January 28, 2005; *Star-Tribune*.	The Honorable R. T. Ryback, Mayor of the City of Minneapolis, Minneapolis City Hall, 350 South Fifth Street, Room 331, Minneapolis, Minnesota 55415.	January 11, 2005	270172 E
North Carolina: Orange.	Town of Carrboro.	July 20, 2004; July 27, 2004; *Chapel Hill Herald*.	Mr. Steven Stewart, Carrboro Town Manager, 301 West Main Street, Carrboro, North Carolina 27510.	July 13, 2004	370275 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Pennsylvania: Adams.	Township of Oxford.	March 10, 2005; March 17, 2005; *The Gettysburg Times and The Hanover Evening Sun*.	Mr. Donald F. Poist, Supervisor of the Township of Oxford, Municipal Building, P.O. Box 86, New Oxford, Pennsylvania 17350.	June 16, 2005	420003 B
South Carolina: Berkeley.	Unincorporated Areas.	February 3, 2005; February 10, 2005; *The Post and Courier*.	Mr. Jim Rozier, Chairman of the Berkeley, County Council, 223 North Live Oak Drive, Moncks Corner, South Carolina 29461.	May 12, 2005	450029 D
South Carolina: Berkeley.	City of Goose Creek.	February 3, 2005; February 10, 2005; *The Post and Courier*.	The Honorable Michael J. Heitzler, Mayor of the City of Goose Creek, 519 North Goose Creek Boulevard, Goose Creek, South Carolina 29445.	May 12, 2005	450206 D
South Carolina: Richland.	Unincorporated Areas.	December 9, 2004; December 16, 2004; *The State*.	Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street, Room 4058, P.O. Box 192, Columbia, South Carolina 29202.	March 16, 2005	450170 G
West Virginia: Mingo.	Unincorporated Areas.	February 28, 2005; March 7, 2005; *The Williamson Daily News*.	Mr. Jim Hatfield, President of the Mingo Board of Commissioners, P.O. Box 1197, Williamson, West Virginia 25661.	November 16, 2004 ...	540133 C
West Virginia: Wyoming.	Unincorporated Areas.	February 16, 2005; February 23, 2005; *The Independent Herald*.	Mr. Herman R. Davis, President of the Wyoming, County Commission, P.O. Box 309, Pineville, West Virginia 24874–0309.	May 25, 2005	540217 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 18, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–10615 Filed 5–26–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Massachusetts	
Duxbury (Town), Plymouth County (FEMA Docket No. D–7604)	
Massachusetts Bay:	
Approximately 1,000 feet southwest of the intersection of Plymouth Avenue and Bay Avenue	*11
Approximately 250 feet east of the intersection of Plymouth Avenue and Bay Avenue	*21
Duxbury Bay/Bluefish River:	
Approximately 650 feet southwest of the intersection of River Lane and Washington Street	*10
Massachusetts Bay/Kingston Bay:	
Approximately 500 feet southeast of the intersection of Loring Street and Bay Road	*11
Approximately 850 feet south of the intersection of Bay Road and Landing Road	*15
Duxbury Bay:	
Approximately 500 feet south of the intersection of Powder Point Avenue and King Caesar Road (intersection closest to Powder Point Bridge)	*17
Massachusetts Bay/Duck Hill River/The Marsh:	
Approximately 1,000 feet north of the intersection of St. George Street and Strawberry Lane	*11
Maps available for inspection at the Duxbury Town Hall, 878 Tremont Street, Duxbury, Massachusetts.	
Pennsylvania	
Manheim (Township), Lancaster County (FEMA Docket No. D–7606)	
Landis Run:	
Approximately 1,000 feet downstream of New Holland Pike	•279
Approximately 150 feet downstream of Butter Road	•306
Maps available for inspection at the Manheim Township Office, 1840 Municipal Drive, Lancaster, Pennsylvania.	
Vermont	
Hinesburg (Town), Chittenden County (FEMA Docket No. D–7610)	
LaPlatte River:	
At the downstream corporate limit	•319
Approximately 100 feet upstream of Silver Street	•328
Patrick Brook:	
At the confluence with LaPlatte River	•325
Approximately 50 feet upstream of the divergence of The Canal	•362
The Canal:	
At the dam downstream of State Route 116	•346
At the divergence from Patrick Brook	•361
Unnamed Diversion Channel:	
At the confluence with Patrick Brook	•335
At the divergence from The Canal	•347
Maps available for inspection at the Hinesburg Town Hall, 10632 Route 116, Hinesburg, Vermont.	
Vermont	
Stowe (Town), Lamoille County (FEMA Docket No. D–7610)	
East Branch Little River:	
At confluence with Little River	•700
At the confluence of Moss Glen and Sterling Brooks	•723
Little River:	
Approximately 1,240 feet downstream of Adams Dam	•620
At the confluence of East and West Branches of Little River	•700
Moss Glen Brook:	
At the confluence with East Branch Little River	•723
Approximately 60 feet upstream of Pucker Street (State Route 100)	•742
Sterling Brook:	
At the confluence with East Branch Little River	•723
Approximately 115 feet upstream of Moulton Lane	•752
West Branch Little River:	
At the confluence with Little River	•700
Approximately 75 feet upstream of Mountain Road (State Route 108)	•956
Maps available for inspection at the Stowe Town Hall, 67 Main Street, Stowe, Vermont.	
Vermont	
West Rutland (Town), Rutland County (FEMA Docket No. D–7610)	
Clark Hill Brook:	
At the confluence with Clarendon River	•497
Approximately 0.54 mile upstream of Casella Lane	•691
Urban Lateral:	
At the confluence with Castleton River	•484
Approximately 0.24 mile upstream of Millyard Culvert	•492
Maps available for inspection at the West Rutland Town Hall, 35 Marble Street, West Rutland, Vermont.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 18, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–10614 Filed 5–26–05; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 70, No. 102
Friday, May 27, 2005

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

RIN 3206—AK46

Training

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations concerning agency reporting requirements on training. The purpose of the revision is to assist agencies to effectively collect information that supports agency determinations of its workforce training needs, and document the results of training and development programs implemented to address those needs, by requiring input into the OPM Governmentwide electronic data collection system.

DATES: Comments must be received on or before July 26, 2005.

ADDRESSES: Send, deliver, or fax written comments to Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street NW., Washington, DC 20415–9700; e-mail: *employ@opm.gov*; fax: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Loretta L. Reeves by telephone at (202) 606–2419, by fax at (202) 606–2329, by TDD at (202) 418–3134, or by e-mail at *Loretta.Reeves@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is issuing proposed regulations to amend the rules in 5 CFR part 410, subparts C, D, and G, which address agency training records and reporting requirements. OPM is creating a Governmentwide electronic system to capture employee human resource information, which will include training data. This system is explained and agency reporting requirements defined in the *Guide to Personnel Recordkeeping* and the *Guide to Human Resources Reporting*.

To support this data collection, OPM is clarifying established policy to ensure that agencies maintain records of their training plans and to require that they report training data in the form as prescribed by the OPM Governmentwide Electronic Data Collection System. The Governmentwide system will allow agencies to maintain accurate records to facilitate reporting on a regular basis as prescribed by the *Guide to Personnel Recordkeeping (www.opm.gov/feddata/persdoc.asp)* and the *Guide to Human Resources Reporting (www.opm.gov/feddata/guidance.asp)*. In addition, there is a change in the period of time required for retaining records in subparts C and D, and a new method for reporting requirements.

We seek comments from reviewers as to whether the proposed regulation clarifies agency's responsibility to reporting data to the governmentwide system and to assure the guides listed assist agencies with implementation processes for reporting the data elements.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 410

Education, Government employees.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

Accordingly, OPM proposes to amend part 410 of 5 CFR as follows:

PART 410—TRAINING

1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.*, 4107; E.O. 11348, and (3 CFR, 1967 Comp., p 275).

Subpart C—Establishing and Implementing Training Programs

§ 410.311 [Removed]

2. Remove § 410.311.

Subpart D—Paying for Training Expenses

§ 410.406 [Removed]

3. Remove § 410.406.

Subpart G—Reporting

4. In subpart G, revise the subpart title to read as set forth above.

5. Revise § 410.701 to read as follows:

§ 410.701 Reporting.

(a) Each agency shall maintain records of training plans, expenditures, and activities in such form and manner as necessary to submit the recorded data to the Office of Personnel Management through the OPM Governmentwide Electronic Data Collection System.

(b) Each agency shall report the training data for its employees' training and development at such times and in such form as required for the OPM Governmentwide Electronic Data Collection System which is explained in the *Guide to Personnel Recordkeeping* and the *Guide to Human Resources Reporting*

(c) Each agency shall establish a Schedule of Records for information required to be maintained by this chapter in accordance with regulations promulgated by the National Archives and Records Administration (NARA).

[FR Doc. 05–10641 Filed 5–26–05; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV05–966–1 PR]

Tomatoes Grown in Florida; Revisions in Requirements for Certificates of Privilege

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the Certificate of Privilege (COP) requirements currently prescribed under the Florida tomato marketing order (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (Committee). This rule

would require those interested in receiving Florida tomatoes shipped under a COP to apply to the Committee to become an approved receiver. This rule would also clarify the definitions for processing and pickling as used in the rules and regulations under the order. These changes would assist the Committee in assuring that COP tomatoes are disposed of into COP outlets.

DATES: Comments received by July 26, 2005, will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by July 26, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; Telephone: (863) 324–3375; Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

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

This rule would revise the COP requirements currently prescribed under the order. This action would require all parties interested in receiving Florida tomatoes shipped under a COP to apply to the Committee to become an approved receiver. This change would assist the Committee in preventing tomatoes shipped under a COP from entering unauthorized outlets. This rule would also clarify the definitions for processing and pickling as used in the rules and regulations under the order. The Committee unanimously recommended these changes at a meeting held on September 9, 2004.

Section 966.54 of the order provides authority for the modification, suspension, and termination of regulations to facilitate the handling of tomatoes for special purposes such as export, charity, processing, or other purposes as specified by the Committee and approved by USDA. Section 966.56 of the order provides authority for the application of adequate safeguards to prevent tomatoes handled pursuant to § 966.54 from entering channels of trade for other than the specified purpose or purposes. Sections 966.120–123 of the order's rules and regulations specify the provisions required under a COP to allow tomatoes for pickling, processing, charity, relief, export, or experimental purposes to be shipped free from certain order requirements. The COP procedures include safeguards to ensure that the tomatoes are shipped for these purposes. The safeguards are also highlighted in § 966.323(c). Section 966.323(g) provides the definition of processing.

This rule would add a new § 966.124 to the order's rules and regulations. This section would require that handlers could only ship tomatoes under a COP to receivers approved by the Committee and would outline the receiver application procedures. Section 966.323(c) would also be modified to reflect the new COP requirements.

The COP provisions allow tomatoes for pickling, processing, charity, relief, export, or experimental purposes to be shipped free from certain order requirements. Consequently, it is important that adequate safeguards exist to assure that such tomatoes are disposed of properly. For example, the Committee noted that tomatoes shipped during the 2003–04 season under a COP for processing were being shipped into the domestic fresh market and not for the intended COP purpose.

The volume of tomatoes shipped for processing under COPs is significant enough to negatively impact the market for fresh tomatoes if these tomatoes are utilized in markets other than those specified in the COP. Last season, nearly 500,000 25-pound equivalent units of Florida tomatoes were shipped under COPs. Consequently, the Committee agreed that additional steps need to be taken to ensure that tomatoes shipped under a COP are only utilized for the purposes specified.

Last season, when the issue with COP tomatoes surfaced, the Committee staff looked for ways to address the problem. Using the current safeguard procedures, those handlers who had shipped to receivers that had used tomatoes shipped under a COP for purposes different than specified had their COPs canceled. Some handlers noted that they had shipped the tomatoes to their receiver in good faith, and that the receiver was responsible for the problem. Further, because the handlers had used COPs to ship to more than one receiver, those handlers affected were no longer able to take advantage of the exemptions provided under the COP provisions.

Considering this, the Committee believes one way to help ensure that tomatoes shipped under a COP are not being misused is to provide for

safeguards on receivers. To address the situation, the Committee recommended that all receivers interested in receiving tomatoes shipped under a COP be required to apply to the Committee to become an approved receiver. In addition, handlers would only be able to ship under a COP to those approved receivers.

Should a receiver utilize the tomatoes for purposes other than specified under the COP, their status as an approved receiver with the Committee would be rescinded. As a result, such a receiver would no longer be eligible to receive tomatoes from any handler under a COP, but would only be able to receive tomatoes meeting the existing grade and size requirements under the order.

Under the provisions that would be added by this rule, anyone interested in receiving tomatoes under a COP would have to file an application with the Committee for review and approval. This would include persons acquiring tomatoes for processing or pickling, as well as tomatoes acquired for relief or charity, for export, for experimental purposes, or for other purposes specified by the Committee. This application would include the name, address, telephone number, and e-mail address of applicant (receiver), the purpose for which the COP tomatoes would be used, physical address where the stated privilege purpose would be accomplished, an indication of whether or not the receiver packs, repacks, or sells fresh tomatoes, a statement that the tomatoes obtained would only be used for the purposes stated in the COP, a statement agreeing to undergo random inspections by the Committee, and an agreement to submit reports as required. The Committee believes that this additional information would be valuable in helping to verify legitimate receivers.

The Committee staff would use the information in the application to investigate and approve receivers wanting to receive tomatoes under COPs. The approved receivers and the tomatoes shipped under the COP provisions would be monitored throughout the year. If during the season an approved receiver is found to be handling tomatoes in ways other than specified under the COP, that receiver's approval would be rescinded. The Committee believes this change would help it better assure that COP tomatoes were shipped into the intended COP outlets. Moreover, handlers who may have shipped to non-compliant receivers would still be able to ship to other approved COP receivers.

This rule also would amend the definition for processing contained in § 966.323 and would add a definition for pickling. Over the past few years, there have been an increasing number of questions surrounding what constitutes a fresh product and what constitutes processing. To help reduce any confusion and to ensure uniformity, the Committee believes it is important to make the definitions for processing and pickling in the order's rules and regulations as clear as possible.

Currently, processing is defined as the manufacture of any tomato product which has been converted into juice, or preserved by any commercial process, including canning, dehydrating, drying, and the addition of chemical substances. This rule would amend this definition to specify further that all processing procedures must result in a product that does not require refrigeration until opened.

In addition to the changes to the definition for processing, a specific definition for pickling would also be added. Pickling would be defined as tomatoes preserved in a brine or vinegar solution. These clarifications should lessen the chance of confusion between handlers and purchasers regarding tomatoes covered under a COP.

The Committee believes this rule would strengthen the existing safeguard provisions and would help deter the use of Florida COP tomatoes for unauthorized purposes. By requiring persons who wish to receive tomatoes under COPs to apply to the Committee to become approved receivers, the Committee would have additional information regarding receivers and the ability to rescind their approved receiver status, if necessary. The Committee also believes enhancing the definitions for processed and pickled tomatoes would help further clarify the appropriate uses of tomatoes shipped under a COP. Therefore, the Committee voted unanimously to make these changes.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 100 producers of tomatoes in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000 (13 CFR 121.201). Currently, there are about 20 receivers who obtain tomatoes under COPs.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2003–04 season was approximately $8.04 per 25-pound container, and fresh shipments for the 2003–04 season totaled 57,989,624 25-pound cartons of tomatoes. Committee data indicates approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida tomato handlers may be classified as small entities. It is believed that the majority of Florida tomato receivers and producers may be classified as small entities.

This rule would revise the COP requirements currently prescribed under the order. This rule would require those interested in receiving Florida tomatoes shipped under a COP to apply to the Committee to become an approved receiver. This change would assist the Committee in assuring that tomatoes shipped under COPs are used for the intended COP purposes. This rule would also clarify the definitions for processing and pickling as used in the rules and regulations under the order. These clarifications would help reduce confusion between handlers and purchasers of tomatoes covered under a COP. The Committee unanimously recommended these changes at a meeting held on September 9, 2004. This rule would add a new § 966.124 to the rules and regulations, amend the safeguard provisions specified in § 966.323(c), and revise the definitions specified in § 966.323(g). Authority for these actions is provided for in §§ 966.54 and 966.56 of the order.

It is not anticipated that these changes would result in any increased costs for growers, handlers, or receivers who comply with COP requirements. The Committee recommended these changes to improve compliance with the provisions established under COPs.

Because nearly 99 percent of Florida tomato shipments are utilized in the domestic fresh market, it is important to assure that tomatoes shipped under COPs are disposed of properly. Adequate safeguards are needed for this purpose.

This action would have a beneficial impact on producers, handlers, and receivers in that it would continue to allow approved receivers to obtain COP tomatoes. Handlers shipping to approved COP receivers also would benefit because the non-compliant receivers would be removed from the Committee's approved receiver list and the handler could continue to take advantage of the exemptions by shipping to other approved COP receivers. Clarifying the definitions of processing and pickling would also help alleviate some of the questions and any confusion concerning what constitutes these procedures. The opportunities and benefits of this rule are expected to be equally available to all tomato handlers and growers regardless of their size of operation.

However, requiring receivers to register with the Committee would impose an additional reporting burden on both small and large receivers. Requiring receivers to apply annually would increase the annual burden by five minutes per receiver, for a total burden of 1.67 hours (5 minutes per response × 1 response per receiver × 20 receivers). Although this action would place an additional burden on receivers of Florida COP tomatoes, the benefits of having the additional information regarding receivers would outweigh the increase in reporting burden.

The Committee discussed alternatives to this action. One alternative considered was to further restrict handlers when shipping tomatoes under a COP. The Committee recognized that some industry members have developed markets for these tomatoes, which would otherwise be discarded. Therefore, the Committee voted to make the changes in this rule rather than further restricting this outlet. Another alternative considered was to only require processors and picklers to apply to the Committee. However, the Committee believed that the application process should be applicable to all parties receiving tomatoes under a COP. Consequently, this alternative was rejected.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Committee's meeting was widely publicized throughout the tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 9, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

As mentioned previously, this action would require an additional collection of information. These information collection requirements are discussed in the following section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that AMS is seeking approval for a new form to collect additional information from persons interested in acquiring tomatoes under a Certificate of Privilege (COP), under Marketing Order No. 966, Tomatoes Grown in Florida (order). Upon Office of Management and Budget (OMB) approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581–0178, Vegetable and Specialty Crops Marketing Orders.

Title: Tomatoes Grown in Florida, Marketing Order No. 966.

OMB Number: 0581-NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Florida tomato marketing order program, which has been operating since 1955.

On September 9, 2004, the Committee unanimously recommended revising the order's administrative rules and regulations to require persons wishing to receive Florida tomatoes exempt from certain order requirements under a COP to register with the Committee annually and provide information on their facilities. This information would be reported on form number FTC–111, ''Application for Registration as an Approved Receiver of Special Purpose Shipments.'' This form would be filled out by persons wishing to receive tomatoes shipped under a COP, and would be submitted to the Committee to obtain approval as a receiver of special purpose shipments. The estimated increase in burden due to the new form required from each entity annually is 5 minutes per person, with a total increased burden estimated at 1.67 hours.

The form is needed so the Committee can collect information on persons wishing to receive shipments of COP tomatoes. The Committee would evaluate this information and determine whether an entity is qualified to receive COP tomatoes. This form would help ensure compliance with the regulations and assist the Committee and the USDA with oversight and planning.

The information collected would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized Committee employees. Authorized Committee employees would be the primary users of the information and AMS would be the secondary user.

The request for approval of the revised information collection under the order is as follows:

Form FTC–111, ''Application for Registration as an Approved Receiver of Special Purpose Shipments''.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Entities who acquire and/or process Florida tomatoes under a COP annually.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.67 hours.

Comments: Comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the Florida tomato marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

In addition to the information collection burden, this rule also invites comments on revising the regulations concerning the COP requirements. A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Part 966, a new § 966.124 is added to read as follows:

§ 966.124 Approved receiver.

(a) *Approved receiver.* Any person who desires to acquire, as an approved receiver, tomatoes for purposes as set forth in § 966.120(a), shall annually, prior thereto, file an application with the committee on a form approved by it, which shall contain, but not be limited to, the following information:

(1) Name, address, contact person, telephone number, and e-mail address of applicant;

(2) Purpose of shipment;

(3) Physical address of where manufacturing or other specified purpose is to occur;

(4) Whether or not the receiver packs, repacks or sells fresh tomatoes;

(5) A statement that the tomatoes obtained exempt from the fresh tomato regulations will not be resold or transferred for resale, directly or indirectly, but will be used only for the purpose specified in the corresponding certificate of privilege;

(6) A statement agreeing to undergo random inspection by the committee;

(7) A statement agreeing to submit such reports as is required by the committee.

(b) The committee, or its duly authorized agents, shall give prompt consideration to each application for an approved receiver and shall determine whether the application is approved or disapproved and notify the applicant accordingly.

(c) The committee, or its duly authorized agents, may rescind a person's approved receiver status upon proof satisfactory that such a receiver has handled tomatoes contrary to the provisions established under the Certificate of Privilege. Such action rescinding approved receiver status shall apply to and not exceed a reasonable period of time as determined by the committee or its duly authorized agents. Any person who has been denied as an approved receiver or who has had their approved receiver status rescinded, may appeal to the committee for reconsideration. Such an appeal shall be made in writing.

3. In § 966.323, a new paragraph (c)(5) is added and paragraph (g) is amended by removing the last three sentences and adding five new sentences in their place to read as follows:

§ 966.323 Handling regulations.

* * * * *

(c)* * *

(5) Make shipments only to those who have qualified with the committee as approved receivers.

* * * * *

(g)* * **Processing* as used in §§ 966.120 and 966.323 means the manufacture of any tomato product which has been converted into juice, or preserved by any commercial process, including canning, dehydrating, drying, and the addition of chemical substances. Further, all processing procedures must result in a product that does not require refrigeration until opened. *Pickling* as used in §§ 966.120 and 966.323 means to preserve tomatoes in a brine or vinegar solution. *U.S. tomato standards* means the revised United States Standards for Fresh Tomatoes (7 CFR 51.1855 through 51.1877), effective October 1, 1991, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

Dated: May 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–10468 Filed 5–26–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius Models 2B, 2B1, and 2F Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise an existing airworthiness directive (AD) for Turbomeca S.A. Arrius Models 2B, 2B1, and 2F turboshaft engines. That AD currently requires replacing the right injector half manifold, left injector half manifold, and privilege injector pipe. This proposed AD would require the same actions, but relaxes the compliance time for the repetitive replacements on Arrius 2F engines. This proposed AD results from Turbomeca relaxing the repetitive replacement interval for Arrius 2F engine fuel nozzles based on review of returned fuel nozzles to Turbomeca. We are proposing this AD to prevent engine flameout during rapid deceleration, or the inability to maintain the 2.5 minutes one engine inoperative (OEI) rating, and to prevent air path cracks due to blockage of the fuel injection manifolds.

DATES: We must receive any comments on this proposed AD by July 26, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You can get the service information identified in this proposed AD from Turbomeca S.A., 40220 Tarnos, France; telephone: (33) 05 59 64 40 00; fax: (33) 05 59 64 60 80.

You may examine the AD docket, by appointment, at the FAA, New England

Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7175; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2000–NE–12–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

On April 16, 2001, we issued AD 2001–08–14, Amendment 39–12218 (66 FR 20910, April 26, 2001). That AD requires replacing the right injector half manifold, left injector half manifold, and privilege injector pipe. That AD results from reports from the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, of partially or totally blocked fuel injection manifolds, which were found during inspections at a repair workshop.

Actions Since AD 2001–08–14 Was Issued

Since we issued AD 2001–08–14, we became aware that Turbomeca S.A. has relaxed the repetitive replacement interval for the right injector half manifold, left injector half manifold, and privilege injector pipe, on Arrius 2F engines, from within 200 hours time-in-service (TIS) since last replacement, to within 400 hours TIS since last replacement.

Relevant Service Information

Turbomeca has issued six revisions to alert service bulletin (ASB) No. A319 73 2012, for Arrius 2B and 2B1 turboshaft engines and has issued seven revisions to ASB No. A319 73 4001 for Arrius 2F turboshaft engines. These ASBs require the replacement of the right injector half manifold, left injector half manifold, and privilege injector pipes, based on operating hours and power check performance. When replacing the manifolds for the first time, the ASBs also require a borescope inspection of the flame tube and the high pressure turbine (HPT) area. The DGAC classified the original ASBs as mandatory and issued AD 1999–217(A) and AD 1999–233(A) in order to assure the airworthiness of these Turbomeca turboshaft engines in France.

Bilateral Agreement Information

These Turbomeca Arrius Models 2B, 2B1, and 2F turboshaft engines are manufactured in France and are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD, which would:

- Relax the repetitive replacement compliance time for Arrius 2F engines in AD 2001–08–14, from 200 hours TIS to 400 hours TIS; and
- As in AD 2001–08–14, replace the right injector half manifolds, left injector half manifolds, and privilege injector pipes with 200 or more hours TIS on the effective date of the proposed AD within 30 days after the effective date of the proposed AD; and
- As in AD 2001–08–14, thereafter, for Arrius Models 2B and 2B1 turboshaft engines, replace injector manifolds within 200 hours TIS since last replacement.

The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

There are about 266 Turbomeca S.A. Arrius Models 2B, 2B1, and 2F turboshaft engines of the affected design in the worldwide fleet. We estimate that 124 of these engines are installed on helicopters of U.S. registry. We also estimate that it would take about two work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $14,320 per engine. The manufacturer has advised the DGAC that it may provide the parts at no cost to the operator, thereby substantially reducing the cost of this proposed rule. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators, to replace all of the affected parts one time, to be $1,791,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2000–NE–12–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12218 (66 FR 20910, April 26, 2001) and by adding a new airworthiness directive, to read as follows:

Turbomeca: Docket No. 2000–NE–12–AD. Revises AD 2001–08–14, Amendment 39–12218.

Applicability

This airworthiness directive (AD) is applicable to Arrius Models 2B, 2B1, and 2F engines. These engines are installed on but not limited to Eurocopter France Model EC120B and Eurocopter Deutschland EC135 T1 rotorcraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent engine flameout and the inability to maintain the 2.5 minutes one engine inoperative (OEI) rating due to blockage of the fuel injection manifolds, do the following:

Initial Replacement

(a) If not already done in accordance with Turbomeca Alert Service Bulletin (ASB) No. A319 73 2012, Revision 2, dated May 25, 1999, or Revision 3, dated July 21, 2000, or ASB No. A319 73 4001, Revision 3, dated May 25, 1999 or Revision 4, dated October 20, 2000, replace injector manifolds and borescope-inspect the flame tube and the high pressure turbine area within 30 days after the effective date of this AD, or prior to exceeding 200 hours time-in-service (TIS), whichever is later. Do these in accordance with Instructions 2.A. through 2.C. of Turbomeca ASB No. A319 73 2012, Revision 6, dated August 14, 2004 for Arrius 2B and 2B1 turboshaft engines, and ASB No. A319 73 4001, Revision 7, dated August 14, 2004, for Arrius 2F turboshaft engines, except that replacement may be done at any appropriately rated repair shop.

Repetitive Replacements

(b) Thereafter, replace injector manifolds, in accordance with Instructions 2.A. through 2.C. of Turbomeca ASB No. A319 73 2012, Revision 6, dated August 14, 2004 for Arrius 2B and 2B1 turboshaft engines, and ASB No. A319 73 4001, Revision 7, dated August 14, 2004, for Arrius 2F turboshaft engines, except that replacement may be done at any appropriately rated repair shop, as follows:

(1) For Arrius 2B and 2B1 engines, replace within 200 hours TIS since last injector manifolds replacement.

(2) For Arrius 2F engines, replace within 400 hours TIS since last injector manifolds replacement.

(3) For all engines, replace injector manifolds before further flight after performing the applicable flight manual or overhaul manual power check if that check shows a negative turbine outlet temperature (TOT) margin or negative T4 margin.

Definition

(c) For the purposes of this AD, time-in-service (TIS) is defined as the number of engine operating hours on the manifolds since the manifolds were new or since the manifolds were refurbished.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 23, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–10634 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with low pressure (LP) compressor fan blades, part number (P/N) FW18548 installed. That AD currently requires LP compressor fan blade replacement with new or previously reworked blades, or rework of the existing LP compressor fan blades. This proposed AD would require the same actions but at reduced compliance times for certain airplane and engine rating combinations and certain maximum gross weight limits. This proposed AD results from a number of new production LP compressor blades found with surfaces formed outside of design intent. We are proposing this AD to prevent possible multiple uncontained LP compressor fan blade failure, due to cracking in the blade root caused by increased stresses in the shear key slots.

DATES: We must receive any comments on this proposed AD by July 26, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from

Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245418.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine And Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–38–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

On July 14, 2004, we issued AD 2004–15–02, Amendment 39–13736 (69 FR 44925, July 28, 2004). That AD requires LP compressor fan blade replacement with new or previously reworked blades, or rework of the existing LP compressor fan blades. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), notified the FAA that an unsafe condition may exist on Rolls-Royce plc RB211 Trent 800 Series turbofan engines. The CAA advises that RR has introduced revised rework lives for LP compressor fan blades, P/N FW18548, in redefined airplane and engine rating combinations. These rating combinations also take into account the airplane gross weight.

Relevant Service Information

We have reviewed and approved the technical contents of RR Service Bulletin (SB) No. RB.211–72–E044, Revision 2, dated October 8, 2004, that describes procedures for inspecting and reworking LP compressor fan blades P/N FW18548, that utilize the shear key blade retention device. The CAA classified this service bulletin as mandatory and issued AD G–2004–0030, dated December 23, 2004, in order to ensure the airworthiness of these RB211 Trent 800 series turbofan engines in the U.K.

Bilateral Agreement Information

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require at or before the accumulation of certain cycles-since-new based on airplane and engine rating combinations and airplane gross weight, replacement of LP compressor fan blades with new or previously reworked LP compressor fan blades, or rework of the existing blades. The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

About 392 RR RB211 Trent 800 series turbofan engines of the affected design are in the worldwide fleet. We estimate that this proposed AD would affect 106 engines installed on airplanes of U.S. registry. We also estimate that about 100 work hours per engine are needed to perform blade rework, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $689,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–38–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13736 (69 FR 44925, July 28, 2004) and by adding a new airworthiness directive, to read as follows:

Rolls-Royce plc: Docket No. 2003–NE–38–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by July 26, 2005.

Affected ADs

(b) This AD supersedes AD 2004–15–02, Amendment 39–13736.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) models RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines, with low pressure (LP) compressor fan blades, part number FW18548 installed. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Unsafe Condition

(d) This AD results from a number of new production LP compressor blades found with surfaces formed outside of design intent. We are issuing this AD to prevent possible multiple uncontained LP compressor fan blade failure, due to cracking in the blade root caused by increased stresses in the shear key slots.

Compliance

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

Actions Required for LP Compressor Fan Blades

(f) Replace LP compressor fan blades with new or previously reworked LP compressor blades before accumulating the specified cycles-since-new (CSN) in the following Table 1, or rework the existing blades as specified in paragraph (g) of this AD.

TABLE 1.—LP COMPRESSOR FAN BLADE REPLACEMENT OR REWORK SCHEDULE

Boeing 777 series	Airplane maximum gross weight (times 1,000 pounds)	RB211 Trent engine model	Replace or rework LP compressor fan blades before accumulating
–300	660, 632.5	–884, –892, –884B	2,400 CSN.
–200	656	–892, –895	2,400 CSN.
–200	648	–892, –892B	3,200 CSN.
–200	632.5	–892B	3,200 CSN.
–200	632.5	–892	4,100 CSN.
–200	555	–884	4,100 CSN.
–200	545	–877	4,100 CSN.
–200	535	–875	4,100 CSN.
–200	506	–875	4,100 CSN.

(g) Rework LP compressor fan blades at or before accumulating the specified CSN in Table 1 of this AD. Follow paragraphs 3.B.(1) through 3.B.(22) of Accomplishment Instructions of RR service bulletin (SB) No. RB.211–72–E044, Revision 2, dated October 8, 2004, to do the blade rework.

(h) For engines moved between configurations, calculate the cycles remaining using either of the following:

(1) Subtract the total CSN from the most limiting configuration's limit from Table 1 of this AD; or

(2) Calculate the cycles remaining using the following equation:

$$X_r = L_c\left[1-\left(\frac{X_1}{L_1}+\frac{X_2}{L_2}+\frac{X_3}{L_3}+\ldots\right)\right]$$

Where:

X*r* = Cycles remaining in current configuration.

L*c* = Cyclic limit of current configuration from Table 1 of this AD.

X*n* = Cycles accumulated in configuration n.

L*n* = Cyclic limit in configuration n from Table 1 of this AD.

(i) Information on the source life of the cycle limits in Table 1 of this AD can be found in RR Alert SB No. RB.211–72–AE055, Revision 3, dated May 28, 2004.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) CAA airworthiness directive G–2004–030, dated December 23, 2004, and RR Alert SB No. RB.211–72–AE055, Revision 4, dated December 9, 2004, pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on May 23, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–10635 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734 and 772

[Docket No. 050316075–5133–02]

RIN: 0694–AD29

Revision and Clarification of Deemed Export Related Regulatory Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period on an advance notice of proposed rulemaking addressing potential regulatory and policy changes that would effect existing BIS deemed export licensing practices. BIS is continuing to seek comments on how these revisions would impact industry, the academic community, and U.S. government agencies involved in research. The new comment period deadline is June 27, 2005.

DATES: Comments must be received by June 27, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AD29, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail to *publiccomments@bis.doc.gov*. Include ''RIN 0694–AD29'' in the subject line of the message.
- Fax: 202–482–3355.
- Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AD29.

FOR FURTHER INFORMATION CONTACT: Alex Lopes, Director, Deemed Exports and Electronics Division, Bureau of Industry and Security, Telephone: (202) 482–4875, or e-mail: *alopes@bis.doc.gov*. Copies of the referenced OIG Report are available at *http://www.oig.doc.gov/oig/reports/2004/BIS-IPE-16176-03-2004.pdf.*

SUPPLEMENTARY INFORMATION: On March 28, 2005 the Bureau of Industry and Security published an advance notice of proposed rulemaking that addresses possible regulatory and policy changes would revise the Export Administration Regulations by adopting recommendations from a report by the Office of Inspector General (OIG). Adopting the OIG's recommendations would entail regulatory or other administrative action related to clarifying the definition of ''use'' technology subject to the EAR, evaluating a foreign national's successive citizenship or permanent residency, and modifying regulatory guidance on licensing technology to foreign nationals working with government-sponsored and university-based research.

The deadline for public comment was May 27, 2005 (70 FR 15607). The Bureau is now extending the comment period until June 27, 2005, to allow the public more time to comment on this proposed rule.

Dated: May 20, 2005.

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. 05–10672 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–020]

Special Local Regulations for Marine Events; Piankatank River, Gloucester County, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard will hold a public meeting to provide a forum for citizens to provide oral comments relating to the ''2005 Piankatank River Race'', a marine event proposed to be held over the waters of the Piankatank River in Gloucester County, Virginia on July 23, 2005. The meeting will be open to the public.

DATES: This public meeting will be on Wednesday, June 29, 2005, from 10 a.m. to 2 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 24, 2005.

ADDRESSES: The Coast Guard public meeting will be held at the Gloucester County Library, 6920 Main Street, Gloucester, VA, 23061. Send written material and requests to make oral presentations to Dennis Sens, Commander (oax), U.S. Coast Guard Fifth District, 431 Crawford Street, Portsmouth, VA 23321.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Recreational Boating Safety Specialist, Fifth Coast Guard District, telephone 757–398–6204, Fax 757–398–6203.

SUPPLEMENTARY INFORMATION: This notice of meeting is in response to the notice of proposed rulemaking, (NPRM), published in the **Federal Register** on March 29, 2005, (Volume 70, pages 15788–15790). The purpose of this public meeting is to provide an opportunity for citizens to provide oral or written comments regarding a proposed marine event on the Piankatank River. The East Coast Boat Racing Club of New Jersey proposes to sponsor the ''2005 Piankatank River Race'' on July 23, 2005. The event would consist of approximately 20 New Jersey Speed Garveys and Jersey Speed Skiffs conducting high-speed competitive races along an oval racecourse in close proximity to the Thousand Trails Campground, over the waters of the Piankatank River, Gloucester, Virginia.

Agenda of Meeting

The agenda includes the following:

(1) Introduction of panel members.

(2) Overview of meeting format.

(3) Background on proposed marine event.

(4) Statements from citizens.

Statements may be delivered in written form at the public meeting and made part of the docket or delivered orally not to exceed 10 minutes.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the meeting coordinator at the address listed under **ADDRESSES** by June 24, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the meeting coordinator as soon as possible.

Dated: May 6, 2005.

Lawrence J. Bowling,

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

[FR Doc. 05–10363 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–044]

RIN 1625–AA00

Safety Zone; Yankee Homecoming Fireworks, Newburyport, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone for the Yankee Homecoming Fireworks in Newburyport, Massachusetts. The safety zone is necessary to protect the life and property of the maritime public from the potential hazards posed by a fireworks display. The safety zone would temporarily prohibit entry into or movement within this portion of the Merrimack River during its effective period.

DATES: Comments and related material must reach the Coast Guard on or before June 27, 2005.

ADDRESSES: You may mail comments and related material to Sector Boston 427 Commercial Street, Boston, MA. Sector Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket CGD01–05–044 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–3010.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking (CGD01–05–044), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

This proposed rule would establish a safety zone on the waters of the Merrimack River Bay within a two hundred yard radius of Cashman Park located at approximate position 42°48.58″ N, 070°52.41″ W. The safety zone would be in effect from 8:30 p.m. until 10:30 p.m. on August 6, 2005.

This safety zone is necessary to protect the life and property of the maritime public from the dangers posed by this fireworks display. It would protect the public by temporarily prohibiting entry into or movement within this portion of the Merrimack River.

Discussion of Proposed Rule

The Coast Guard proposes establishing a temporary safety zone in a portion of the Merrimack River. The temporary safety zone would be in effect from 8:30 p.m. until 10:30 p.m. EDT on August 6, 2005. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the Merrimack River except for the portion delineated by this rule. This safety zone will control vessel traffic during the fireworks event to protect the safety of the maritime public.

Given the limited time frame of the firework display and because the zone leaves the majority of the Merrimack River open for navigation, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local media, local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents vessel traffic from transiting into a portion of the Merrimack River during this event, the effect of this regulation will not be significant for several reasons: Vessels will be excluded from the area of the safety zone for only two hours; vessels will be able to operate in the majority of the Merrimack River during this time period; and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the effected portion of the Merrimack River from 8:30 p.m. until 10:30 p.m. EDT August 6, 2005.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass outside of the safety zone during the effective period, the period is limited in duration, and advance notification via safety marine informational broadcast and local notice to mariners.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would effect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Paul English at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 proposed rule under Executive Order 13211, Actions Considering Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Coast Guard 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 2.B.2 of the Instruction. Therefore, we believe that this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. This rule fits the category selected from paragraph (34)(g), as it would establish a safety zone. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

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 proposes to amend 33 CFR 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.T01–044 to read as follows:

§ 165.T01–044 Safety Zone; Yankee Homecoming Fireworks, Newburyport, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Merrimack River within a 200 yard radius of Cashman Park, at approximate position 42°48.58″ N, 070°52.41″ W.

(b) *Effective date.* This section is effective from 8:30 p.m. until 10:30 p.m. EDT on August 6, 2005.

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

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: May 16, 2005.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 05–10595 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7618]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance)

Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Connecticut	South Windsor (Town), Hartford County.	Podunk River	At a point just downstream of Foster Road	None	*266
			At a point approximately 160 feet upstream of Miller Road.	None	*301
		Quarry Brook	At a point approximately 1,056 feet upstream of the confluence with Podunk River.	*57	*58
			Approximately 53 feet upstream of Clark Street.	None	*108
		Plum Gully Brook	Approximately 528 feet upstream of the confluence with Podunk River.	*58	*57
			Approximately 280 feet upstream of Nevers Road.	None	*185
Maps available for inspection at the South Windsor Town Hall, 1540 Sullivan Avenue, South Windsor, Connecticut.					
Send comments to Mr. Matthew B. Galligan, South Windsor Town Manager, South Windsor Town Hall, 1540 Sullivan Avenue, South Windsor, Connecticut 06074.					
Florida	Clearwater (City), Pinellas County.	Ponding Area No. 18	Approximately 100 feet east of the intersection of Hamlet Avenue and Wildwood Way.	None	•45
Maps available for inspection at the City of Clearwater Engineering Department, 100 South Myrtle Avenue, Suite 220, Clearwater, Florida.					
Send comments to The Honorable Brian Aungst, Mayor of the City of Clearwater, P.O. Box 4748, Clearwater, Florida 33758–4748.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 18, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–10613 Filed 5–26–05; 8:45 am]

BILLING CODE 9110–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 050315074–5074–01; I.D. 022405B]

RIN 0648–AS92

Endangered and Threatened Wildlife; Sea Turtle Conservation

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

ACTION: Proposed rule; request for comments

SUMMARY: NMFS proposes to require sea turtle conservation measures for all sea scallop dredge vessels fishing in the mid-Atlantic from May 1 through November 30 each year. The proposed rule would require all vessels with a sea scallop dredge and which are required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, to modify their dredge(s) when fishing south of 41° 9.0′ N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone. Any incidental take of threatened sea turtles in sea scallop dredge gear in compliance with this proposed gear modification requirement and other applicable requirements would be exempted from the prohibition against takes. This action is necessary to help reduce the take of sea turtles in scallop dredge gear and conserve loggerhead sea turtles, listed as threatened under the Endangered Species Act (ESA).

DATES: Comments on the proposed rule must be received by 5 p.m. EST on June 27, 2005.

ADDRESSES: Written comments on this action may be submitted on this proposed rule, identified by RIN 0648–AS92, by any one of the following methods:

(1) NMFS/Northeast Region Website: *http://www.nero.noaa.gov/nero/regs/com.html*. Follow the instructions on the website for submitting comments.

(2) E-mail: scallopchainmat@noaa.gov Please include the RIN 0648–AS92 in the subject line of the message.

(3) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instruction on the website for submitting comments.

(4) Mail: Mary A. Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930, ATTN: Sea Turtle Conservation Measures, Proposed Rule

(5) Facsimile (fax): 978–281–9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule

Copies of the Draft Environmental Assessment/Regulatory Impact Review and documents cited in the proposed rule can be obtained from *http://www.nero.noaa.gov/nero/regs/com.html* listed under the Electronic Access portion of this document or by writing to Ellen Keane, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930

FOR FURTHER INFORMATION CONTACT: Ellen Keane (ph. 978–281–9300 x6526, fax 978–281–9394) or Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico that are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles under NMFS' jurisdiction, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be exempted by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA, respectively. Existing sea turtle conservation regulations at 50 CFR 223.206(d) exempt fishing activities and scientific research from the prohibition on takes of threatened sea turtles under certain conditions. This proposed rule would add an additional requirement with which vessels with sea scallop dredge gear must comply in order to have any incidental takes of threatened sea turtles exempted from the prohibition on takes.

The incidental take and mortality of sea turtles as a result of scallop dredging has been documented in the mid-Atlantic. Based on the available information, NMFS has determined that the use of a dredge modified with a chain mat would sharply reduce the capture of sea turtles in the dredge itself, as well as any ensuing injuries and mortalities that occur as a result of being caught in the dredge (*e.g.* drowning, crushing in the dredge bag, crushing on deck, etc.; note: sea turtles may still interact with modified gear. See Interaction of dredge gear with sea turtles). This proposed action, taken under the authority in Section 4(d) of the ESA, is necessary to provide for the conservation of sea turtles.

Sea Turtle Bycatch in the Sea Scallop Dredge Fishery

Based on the Northeast Fisheries Science Center (NEFSC) Observer Program data, a total of 62 observed sea turtle takes were attributed to the Atlantic sea scallop dredge fishery during normal fishery operations from March 1, 1996 through October 31, 2004. ''Observed'' or ''observed take'' means seen and documented by a NMFS-approved observer. Of these, 43 were identified as loggerheads; the remaining animals were hard-shelled sea turtles that could not be positively identified. Four of the sea turtles were fresh dead upon retrieval or died on the vessel, 1 was alive but required resuscitation, 25 were alive but injured, 20 were alive with no apparent injuries, and 12 were listed as alive but condition unknown because the observer did not have sufficient opportunity to examine the turtle.

In 2004, the NEFSC completed an assessment of sea turtle bycatch in the 2003 scallop dredge fishery in the mid-Atlantic (Long Island, New York to Cape Hatteras, North Carolina). Total estimated bycatch of sea turtles in this fishery from June 1 through November 30, 2003 was 749 animals (C.V. = 0.28).

A Biological Opinion on the Atlantic sea scallop Fishery Management Plan (FMP), issued on December 15, 2004, anticipates the take of up to 749 loggerhead sea turtles annually as a result of the continued operation of the scallop dredge fishery with up to 479 of these takes resulting in injuries that would lead to death or an inability of the turtle to reproduce.

Impacts of Sea Scallop Dredging

The only species positively identified by the NEFSC Observer Program to have been captured in sea scallop dredge gear is the loggerhead sea turtle; however, hardshell turtles were caught and not

identified by species. NMFS believes these unidentified sea turtles are not likely to be Kemp's ridley and green sea turtles which are expected to occur predominantly in inshore waters (i.e., bays and estuaries, and other coastal waters) where the scallop dredge fishery does not operate (Lutcavage and Musick 1985; Keinath *et al.* 1987; Morreale and Standora 1993; Spotila 1998). In addition, while western Atlantic green turtles range from Massachusetts to Argentina, including the Gulf of Mexico and Caribbean, they are considered less abundant north of Cape Hatteras. Hawksbill sea turtles are uncommon in waters of the continental United States. There have been accounts of hawksbill sea turtles in south Florida and Texas and small hawksbill sea turtles have stranded as far north as Cape Cod, Massachusetts. However, many of these strandings were observed after hurricanes or offshore storms. No takes of hawksbill sea turtles have been recorded in the northeast or mid-Atlantic fisheries covered by the NEFSC Observer Program. Given the information on sea turtle distribution in comparison to the distribution of scallop dredge effort within the mid-Atlantic and given observer identification of sea turtles captured in scallop dredge gear, NMFS considers it unlikely that Kemp's ridley, green, or hawksbill sea turtles will be captured in sea scallop dredges. As described above, the incidental take and mortality of loggerhead sea turtles in the sea scallop dredge fishery has been documented, and the potential for takes of loggerhead sea turtles exists when their distribution overlaps with the distribution of effort in the scallop dredge fishery.

There are at least five western Atlantic loggerhead subpopulations. The south Florida nesting group is the largest known loggerhead nesting assemblage in the Atlantic and one of only two loggerhead nesting assemblages worldwide that have greater than 10,000 females nesting per year. The northern subpopulation is the second largest loggerhead nesting assemblage within the United States. The remaining three subpopulations (the Dry Tortugas, Florida Panhandle, and Yucatan) are much smaller subpopulations with nest counts ranging from roughly 100 - 1,000 nests per year. To date, analysis of nesting data from the Index Nesting Beach Survey Program indicates that there is no discernable trend in abundance for the south Florida, northern or Florida Panhandle subpopulations. No conclusions can be made from nesting data on the Dry Tortugas and Yucatan nesting subpopulations at this time.

Cohorts from each of the subpopulations are expected to occur in the action area. Genetic analysis of samples collected from benthic immature loggerhead sea turtles captured in pound nets in the Pamlico-Albemarle Estuarine Complex in North Carolina from September-December of 1995–1997 indicated that cohorts from all five western Atlantic subpopulations were present (Bass *et al.* 2004). In a separate study, genetic analysis of samples collected from loggerhead sea turtles from Massachusetts to Florida found that all five western Atlantic loggerhead subpopulations were represented (Bowen *et al.* 2004). Bass *et al.* (2004) found that 80 percent of the juveniles and sub-adults utilizing the foraging habitat originated from the south Florida nesting population, 12 percent from the northern subpopulation, 6 percent from the Yucatan subpopulation, and 2 percent from other rookeries. Tissue samples for genetic analysis have been collected from loggerhead sea turtles captured in the scallop dredge fishery. However, the results of the testing are still pending.

The distribution of loggerhead sea turtles overlaps seasonally with the distribution of scallop fishing effort from the southern boundary of the management area from approximately the North Carolina/South Carolina border to Cape Cod, Massachusetts. Hard-shelled turtles have been injured and killed as a result of being captured in sea scallop dredge gear. Of the 62 turtles observed taken in the scallop dredge fishery, excluding the experimental fishery, 43 were positively identified as loggerhead sea turtles. The remaining animals were hard-shelled turtles that could not be positively identified. All loggerhead sea turtles are still listed as threatened under the ESA as populations have not yet recovered. Reducing sea turtle mortality will help subpopulations to recover. NMFS must protect and conserve loggerhead sea turtle populations under the ESA.

Experimental Testing of Modified Dredge

In response to the increase in observed takes, NMFS worked with the scallop fishing industry and Virginia Institute of Marine Science to investigate the use of a modified sea scallop dredge to keep sea turtles from being captured in the dredge bag. The modified dredge uses a chain mat configuration consisting of evenly spaced ''tickler'' (horizontal) and ''vertical'' (up and down) chains hung forward of the sweep, between the cutting bar and the sweep. This is a modified rock chain arrangement constructed of lighter, but stronger chain (DuPaul et al. 2004a).

Preliminary trials of the chain mat gear were conducted in 2002, and an experimental fishery to test the gear was conducted from July 17, 2003 – October 9, 2004. Trained observers were not present during the preliminary trials. During the preliminary trials, side-by-side testing of the gear was performed; in each tow, only one of the vessel's two dredges was modified with the chain mat. In these preliminary trials, there were two interactions with sea turtles. DuPaul *et al.* (2004a) reported that one turtle was taken in the unmodified dredge and the other turtle was ''hanging onto the chain mat'' and subsequently swam away. No further information on the two takes was available.

Twelve different vessels participated in the 2003–2004 field evaluations of the chain mats. In each tow, the vessels fished with two sea scallop dredges, one unmodified on one side of the vessel and the other modified with the chain mat on the other side of the vessel. The trials were performed with dredges measuring between 11 and 15 ft (3.35 – 4.57 m) wide. For 14 ft (4.27 m) and 15 ft (4.57 m) dredges, 11 vertical and 6 horizontal chains were used; for smaller dredges, 9 verticals were used (DuPaul et al. 2004a). Evenly spaced on a normal sweep arrangement, this should give about a 12–inch (30.5–cm) to 13–inch (33.0–cm) square pattern.

In total, side-by-side testing was conducted on 22 fishing trips, encompassing 277 fishing days and 3,248 tows (of which 2,823 tows were observed). A total of eight turtle interactions occurred (six of which were observed), all with the unmodified scallop dredge. Of the eight sea turtles caught, three were alive with no apparent injuries, three were alive released with injuries, one was killed when the dredge frame fell on the turtle, and one was killed prior to coming aboard. The six observed interactions were with loggerhead sea turtles. One of the unobserved interactions was reported by the fisherman as a loggerhead sea turtle. The second unobserved interaction was reported by the fisherman as a leatherback. NEFSC's general protocol for confirmation of at-sea species identification requires that the species be considered as unknown unless either the observer is experienced in sea turtle identification and has confidence in the identification, or the observer is inexperienced and has provided supporting information (i.e. photos, tissue samples). For both of

these unobserved takes, NMFS is considering the species identification to be ''unknown turtle spp.'' As far as NMFS is aware, the fishermen reporting the take of the leatherback and the take of the loggerhead have not been trained nor are they experienced in identifying sea turtle species. No supporting materials, such as photos or tissue samples, have been provided. Therefore, based on the confirmation protocol for at-sea species identification, NMFS considers the species identification of these takes to be ''unknown turtle spp.''

With respect to the catch of sea scallops, the modified chain mat dredge caught 6.71 percent less scallops than the unmodified dredge (DuPaul et al. 2004a). DuPaul et al. (2004a) concluded that the chain mats can be effective in eliminating the incidence of sea turtle bycatch in the dredge without substantial reductions in the harvest of sea scallops.

Petition Request for Chain Mat Configuration

On June 17, 2004, NMFS received a petition from the Fisheries Survival Fund and the Garden State Seafood Association requesting that NMFS promulgate an emergency rule pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that would require scallop dredges to be modified with additional chains as in the experimental fishery and scallop trawls to be modified by installation of a Turtle Excluder Device when fishing south of Long Island, New York and north of Cape Hatteras, North Carolina during the period May 1 - October 15 each year. On July 7, 2004, NMFS published a Notice of Receipt of the petition in the **Federal Register** and invited public comment for 30 days (69 FR 40850). NMFS published a response to the petition in the **Federal Register** on November 2, 2004 (69 FR 63498), announcing that it would not undertake an emergency rulemaking as requested by the petitioners because the circumstances outlined in the Petition did not justify an immediate need for a Magnuson-Stevens Act emergency rule and that the Magnuson-Stevens Act is not the appropriate authority for adequately addressing the incidental capture of sea turtles in scallop fishing gear (69 FR 63498). However, as described in the Notice of Decision on Petition for Emergency Rulemaking, NMFS indicated it would conduct rulemaking under the authority of the ESA to enact measures to address incidental sea turtle takes in the Atlantic sea scallop fishery (69 FR 63498).

Interaction of Dredge Gear with Sea Turtles

Risks to sea turtles from capture in dredge gear include forced submergence and injury. Sea turtles forcibly submerged in any type of restrictive gear would eventually suffer fatal consequences from prolonged anoxia and/or seawater infiltration of the lung (Lutcavage *et al.* 1997). Sea turtles caught in scallop dredge gear often suffer injuries. The most commonly observed injury is damage to the carapace. The causes of these injuries are unknown, but the most likely appear to be from being struck by the dredge (during a tow or upon emptying of the dredge bag), crushed by debris (*e.g.*, large rocks) that collects in the dredge bag, or as a result of a fall during hauling of the dredge. Under typical fishing operations, the dredge is hauled to the surface, lifted above the deck of the vessel and emptied by turning the bag over. Under such conditions, a turtle caught in the bag would fall many feet to the deck of the vessel and could suffer cracks to the carapace as a result of the fall. After the bag is dumped, the dredge frame is often dropped on top of it with the cutting bar, located on the bottom aft part of the frame, also constituting a crushing weight. Thus, dumping of the catch and the sudden lowering of the gear onto the deck are actions during which turtles could be injured. As the modified dredge will reduce the likelihood of sea turtle capture in the dredge bag, carapace injuries sustained while the turtle is in the dredge or brought on board the vessel will be reduced with use of the chain mat configuration. Additionally, the possibility that sea turtles will be forcibly submerged due to capture in the dredge bag will be sharply reduced.

The NEFSC estimated, in the 2003 fishing year, there were 749 sea turtles taken in the mid-Atlantic sea scallop fishery. According to the December 15, 2004 biological opinion, the agency anticipates that up to 749 sea turtles will be taken each year without the chain mat configuration in place, and up to 479 of these (approximately 64 percent) are expected to sustain injuries leading to death or failure to reproduce. With the chain mat installed over the opening of the dredge bag, it is reasonable to assume that up to 749 sea turtles will come into contact with the chain mat (at least). Data do not exist on the percentage of sea turtles interacting with the chain mat-modified gear that will be unharmed, sustain minor injuries, or sustain serious injuries that will result in death or failure to reproduce. However, there are several assumptions that can be made to help estimate the degree of interaction. The first assumption is that sea turtles likely interact with scallop dredge gear both on the sea floor as the gear is being fished and in the water column as the gear is hauled back to the vessel. This is a reasonable assumption, because sea turtles have been observed in the area in which scallop gear operates and they have been seen near scallop vessels when they are fishing or hauling gear. In addition, sea turtles generally are known to forage and rest on the sea floor as part of their normal behavior.

The second assumption relates to the apportionment of the seriousness of the interaction between sea turtles and the modified gear. For this, we start with the assumption that up to 749 sea turtles will still interact with the chain mat-modified gear, and the estimate that up to 479 sea turtles will be seriously injured/killed and 270 will be unharmed/slightly injured without the chain mat. There are two scenarios in which sea turtles may sustain serious injuries that lead to death or the failure to reproduce interactions on the sea floor or interactions in the water column.

With the chain mat in place, it is reasonable to assume that the sea turtles on the sea floor would still interact with the gear, but that the nature of the interaction would be different. NMFS assumes that some portion of the 479 seriously injured sea turtles are taken on the bottom. The precise number, however, cannot be quantified. As the dredge is fished on the bottom, sea turtles may be passed over with the dredge frame and cutting bar, which weigh thousands of pounds. Without the chain mat modification, the sea turtle may be swept into the dredge bag, forcibly submerged for the remainder of the tow, and will be at risk of further injury due to being tumbled around or hit by debris inside the bag or being crushed when the catch is dumped on the vessel's deck. With the modified gear, the sea turtles may still be hit by the leading edge of the frame and cutting bar and would likely be forced down to the sea floor rather then swept into the dredge bag. Since the turtles are not swept into the bag, they would be run over by the aft portion of the dredge including the bag which constitutes a crushing weight. As a result, sea turtles on the bottom that interact with the modified dredge would probably fare just as poorly as those that interact with the unmodified dredge. Given the nature of the bottom interaction without the chain mat, it is reasonable to assume that the same portion of the 479 sea turtles interacting with the gear on the

bottom would still experience serious injuries that lead to mortality or failure to reproduce with the chain mat in place as without it.

NMFS assumes that the remaining portion of the 479 seriously injured sea turtles are taken in the water column. Again, the precise number cannot be quantified. Any injuries due to an interaction in the water column during haul back with the chain mat-modified gear are likely to be non-serious. The chain mat would prevent serious injuries, since the turtles would not be able to get into the dredge bag; therefore, they would not be dumped on the deck from height or crushed by falling gear. Once off the bottom, the gear is hauled back through the water column at a slow speed (1 to 4 miles per hour (1.6–6.5 km/hr)), so NMFS assumes that any turtle hitting the chain mat in the water column would not be hit with great force and would likely be able to swim away without serious injury. During the preliminary trials of the chain mat configuration, one turtle was observed ''hanging onto'' the chain mat, perhaps held by water pressure, and subsequently swimming away. NMFS has no indication that this interaction, or this type of interaction, would result in serious injury. NMFS' assumption about this type of interaction is that the animal is being held against the gear by water pressure as the gear moves through the water during haul back. The vessel often continues to move forward as the gear is hauled. Once the gear stops moving and the pressure is relieved, the animal would be able to swim away without serious injury. Therefore, NMFS assumes that the portion of the 479 sea turtles taken in the water column are unlikely to be seriously injured. NMFS also assumes that the 270 unharmed/slightly injured sea turtles are taken in the water column and that serious injury to these turtles caused by the chain mat is unlikely for the reasons listed above.

In summary, the chain mat can logically be assumed to prevent serious injury leading to death or failure to reproduce caused by the dumping of turtles on the vessel's deck and crushing them by the falling gear following an interaction in the water column interaction. The chain mat would also prevent serious injuries from dumping/crushing on deck of sea turtles following an interaction on the sea floor. However, we have made the conservative assumption that a turtle in a bottom interaction sustains serious injuries on the bottom, so, under this conservative assumption, there would not be a benefit from the chain mat for bottom interactions. This assumption, however, may be too conservative in that it is possible that turtles in a bottom interaction only receive minor injuries.

NMFS recognizes that the specific nature of the interaction between sea turtles and sea scallop dredge gear remains unknown, as sea turtles could be taken when the dredge is fished on the bottom or during haul back and NMFS cannot conclude that the modified dredge eliminates interactions with sea turtles. The chain mat sharply reduces the capture of sea turtles in the dredge bag and, therefore, sharply reduces drowning and serious injuries that result from such capture. NMFS does not know how sea scallop dredge gear (with or without the modification) may interact with sea turtles on the ocean bottom. DuPaul *et al.* (2004a) report that sea turtles have been hauled up on top of the gear, either on the frame or near the twine top. Many were seen to swim away when the gear reached the vessel. Sea turtles may have been prevented from escaping by either being wedged in the forward parts of the dredge frame or held by the flow of water against the dredge. These interactions would occur regardless of whether the dredge is modified with the proposed chain mat or not. Further testing is necessary to determine what effects the entire gear, including the chain mat modification, has on sea turtles, aside from the positive effect of the chain mat of reducing injury or mortality of sea turtles by keeping them out of the dredge bag. Video work is being conducted to provide more information on the interactions between sea turtles and sea scallop dredge gear in the water. This action does not preclude NMFS from taking further regulatory action as new information becomes available.

Modification of Sea Scallop Dredge Gear

To conserve sea turtles, NMFS proposes that all vessels required to have a Federal Atlantic sea scallop fishery permit and using Atlantic sea scallop dredge gear, regardless of dredge size or vessel permit category, be required to modify their dredge(s) when fishing south of 41° 9.0′ N. lat., from the shoreline to the outer boundary of the Exclusive Economic Zone, from May 1 through November 30 each year. All dredges used for fishing must be modified with evenly spaced ''tickler'' (horizontal) chains and ''vertical'' (up-and-down) chains in the following configuration, which is dependent on the size of the dredge frame width. Dredges with a frame width of greater than 13 ft (3.96 m) would be required to use 11 vertical and 6 tickler chains; dredges with a frame width of 11 to 13 ft (3.35 to 3.96 m) would be required to use 9 vertical and 5 tickler chains; dredges with a frame width of 10 ft (3.05 m) to less than 11 ft (3.35 m) would be required to use 7 vertical and 4 tickler chains; and dredges with a frame width of less than 10 ft (3.05 m) would be required to use 5 vertical and 3 tickler chains. If a vessel elects to use a different configuration, the length of each side of the squares formed by the chain must be less than or equal to 14 inches (35.5 cm).

Interactions have been observed in the sea scallop fishery from New Jersey south through the Virginia/North Carolina border from late June to late October and the potential for interactions exists during May and November due to the overlap in distribution of loggerhead sea turtles and dredge fishing effort in the southern range of the fishery (Shoop and Kenney 1992; Braun-McNeill and Epperly 2004). Implementation of the proposed gear restrictions from May through November is expected to increase protection of sea turtles. The scallop management area defined in the FMP consists of the resource throughout its range in waters under the jurisdiction of the U.S. NMFS does not anticipate any fishing south of Cape Hatteras, North Carolina due to a lack of scallop resources. Thus, the timing of these proposed measures are based on Cape Hatteras as the lower boundary. Should scallop fishing occur south of this boundary or if observer records indicate interactions north of Long Island, New York, NMFS may reconsider the timing and area of the conservation measures.

Spatial Extent of the Proposed Action

As described above the proposed rule would require the use of the chain mat on sea scallop dredge vessels when fishing south of 41° 9.0′ N. latitude, from the shoreline to the outer boundary of the EEZ. While NMFS is proposing using the 200–nautical mile limit of the EEZ as the eastern boundary for the gear modification, NMFS is considering replacing the eastern EEZ boundary with a north-south (longitudinal) line so as to separate the Mid-Atlantic sea scallop fishing area from the Southern New England sea scallop fishing area. NMFS is considering an eastern boundary at 70° 20′ W. long. (the western edge of the Nantucket Lightship Closed Area) as well as any options proposed during the public comment period. NMFS has analyzed the physical, biological, and socio-economic impacts that this proposed rule would have based on the outer boundary of the EEZ as the eastern boundary. If the EEZ

boundary is replaced with this longitudinal line, the geographic area in which the chain mat configuration would be required would be smaller than the area of the proposed action. Any impacts to habitat or the physical environment resulting from the modification are expected to be less than the impacts of the proposed action as a smaller geographic area would impacted. The proposed action is not considered to have a significant economic impact on the industry. Economic impacts are likely to be reduced even further if the EEZ boundary is replaced with a longitudinal line to the west of that boundary as fewer vessels are likely to be required to use the chain mat configuration. The benefit to the sea turtle population is not expected to change if the EEZ boundary is replaced with this longitudinal line as sea turtles are not expected to interact with sea scallop dredge gear in the southern New England sea scallop fishing area. Although hard-shelled sea turtles do occur seasonally in New England waters (roughly June-October) turtles are generally observed in inshore waters (i.e., bays and estuaries) where the scallop fishery does not operate. Relatively high levels of observer coverage (22 percent - 51 percent) occurred in portions of the Georges Bank Multispecies Closed Areas that were conditionally opened to scallop fishing in the 1999 and 2000 scallop fishing years. Despite this high level of observer coverage and operation of scallop dredge vessels in the area during June - October, no sea turtles were observed captured in scallop dredge gear. In general, replacing the EEZ boundary with the proposed longitudinal line will result in the same benefit to sea turtles as the proposed action, while impacts to the physical environment and habitat, as well as social and economic effects, are likely to be reduced.

Classification

The proposed rule has been determined to be significant by the Office of Management and Budget for the purposes of Executive Order 12866.

NMFS has prepared an initial regulatory flexibility analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. No reporting, record keeping, or other compliance requirements are proposed. A summary of the analysis follows:

The fishery affected by this proposed rule is the mid-Atlantic sea scallop dredge fishery. The proposed action requires all vessels, regardless of dredge size or vessel permit category, to modify their dredge gear from May 1 through November 30 when fishing south of 41° 9.0′ N. lat., from the shoreline to outer boundary of the Exclusive Economic Zone. The proposed gear modification is fairly inexpensive (between $177.37 and $778.44 per vessel). Therefore, NMFS assumes that a vessel will convert their gear and continue fishing in the area. According to Vessel Trip Report (VTR) Data for 2003, 314 vessels fished in the mid-Atlantic from May 1 through November 30. Of these, 277 were limited access vessels and 37 were general category vessels. In 2003, the 314 affected vessels earned approximately 221.4 million dollars in revenues using a total of 40,888 days at sea. The 277 limited access vessels earned approximately 98 percent of the total industry revenues and 95 percent of the industry revenues were earned using scallop dredge gear. On average, limited access vessels earned between $441,800 and $895,100 per year and general category vessels earned between $46,700 and $162,000 per year.

Using the materials recommended in DuPaul *et al.* (2004a) and average costs for labor, the cost for modifying a scallop dredge ranges from a $177.37 for a dredge less than 10 ft (3.05 m) to $389.22 for a dredge greater than 13 ft (3.96 m). The second cost to the industry is the loss of catch with the modified dredge. During the 2003–2004 field trials, the modified dredge caught, on average, 6.71 percent less scallops than the unmodified dredge (DuPaul *et al.* 2004a). This is slightly less than the loss of 6.76 percent reported in the draft final report on the experiment (DuPaul *et al.* 2004b). The economic analysis assumed a loss of 6.76 percent. If fishermen do not increase their effort to offset this loss, they will experience a reduction in revenues. Assuming that the fishermen do not minimize this loss by increasing effort, revenue for a limited access vessel may be reduced between a low of $18,800 to a high of $38,700; while revenue for a general category vessel may be reduced between $1,300 and $5,600. The total impact of the cost to modify the gear and loss of revenue due to reduction in catch may reduce a vessel's annual revenues on average between 3 percent and 7.8 percent.

Of the 314 affected vessels, 193 vessels may have their revenues reduced by 5 percent or less, 116 vessels may have their revenues reduced between 5 and 10 percent, and 5 vessels may have their revenues reduced by greater than 10 percent. Of the 121 vessels that may have revenue reductions exceeding 5 percent, 27, 29, 29, and 22 of the vessels are registered to the state of Massachusetts, New Jersey, Virginia, and North Carolina, respectively. Annual industry revenues would be reduced by 4.3 percent (=$9.6 million/$221.4 million).

Five alternatives were evaluated: (1) The preferred alternative (PA) is to require the chain mat modification on all vessels with a Federal Atlantic sea scallop fishery permit and a sea scallop dredge, regardless of dredge size or vessel permit category, when fishing south of 41° 9.0′ N latitude, from the shoreline to the outer boundary of the EEZ from May 1 through November 30 each year ; (2) non-preferred alternative 1 (NPA 1) is exactly the same as the PA; however, the gear modifications are only required from May 1 through October 15; (3) non-preferred alternative 2 (NPA 2) is exactly the same as the PA; however, the gear modification is only required for vessels that have dredge frames greater than 11 ft (3.35 m) wide; (4) non-preferred alternative 3 (NPA 3) prohibits the use of all sea scallop dredge gear south of 41° 9.0′ N. lat. from May 1 through November 30; and (5) the no-action alternative. All business entities participating in the sea scallop dredge fisheries are considered small business entities. Under the no action alternative, fishing practices would not be restricted or modified; therefore, there is no economic impact on the individual or industry. The reduction in annual revenues per vessel is expected to range from 3.0 to 7.8 percent for the PA, 3.0 to 7.6 percent for NPA 1, 4.4 to 4.5 percent for NPA 2 and 31.8 to 65.2 percent for NPA 3. NPA 3 has the greatest economic impact and all 314 affected vessels can expect revenue reductions greater than 5 percent. The PA has the next lowest economic impact (121 vessels with annual revenue reductions greater than 5 percent), followed by NPA 1 (54 vessels), and NPA 2 with the lowest economic impact (35 vessels). The PA, NPA 1, and NPA 2 could be considered to have similar economic impacts since the differential is so small. Under the PA, 314 vessels are affected and industry revenues are reduced by 4.3 percent. Under NPA 1 and NPA 3, 314 vessels are affected, and industry revenues are reduced by 3.7 percent and 63.6 percent, respectively. Under NPA 2, 234 vessels are affected and industry revenues are reduced by 3.9 percent. In summary, NPA 3 has the

highest cost to the industry, the PA ranks second in industry cost, and NPA 1 and NPA 2 rank third and fourth, respectively, in industry cost.

Literature Cited

Bass, A. L., S. P. Epperly, and J. Braun-McNeill. 2004 Multi-year analysis of stock composition of a loggerhead sea turtle (*Caretta caretta*) foraging habitat using maximum likelihood and Bayesian methods. Conservation Genetics. 5:783–796.

Braun-McNeill, J. and S. P. Epperly. 2004. Spatial and temporal distribution of sea turtles in the western North Atlantic and the U.S. Gulf of Mexico from Marine Recreational Statistic Survey (MRFSS). Marine Fisheries Review. 64(4)50–56.

Bowen, B. W., A. L. Bass, S. Chow, M. Bostrom, K. A. Bjorndal, A. B. Bolten, T. Okuyama, B. M. Bolker, S. P. Epperly, E. LaCasella, D. Shaver, M. Dodd, S. R. Hopkins-Murphy, J. A. Musick, M. Swingle, K. Rankin-Baransky, W. Teas, W. N. Witzell, and P. H. Dutton. 2004. Natal homing in juvenile loggerhead turtles (*Caretta caretta*). Molecular Ecology. 13:3797–3808.

DuPaul, W. D. 2004a. Industry trials of a modified sea scallop dredge to minimize the catch of sea turtles. Final Report. November 2004. VIMS Marine Resources Report, No. 2004–12. 35 pp.

DuPaul, W. D. 2004b .Industry trials of a modified sea scallop dredge to minimize the catch of sea turtles. Draft Final Report. August 2004. Contract Number PO#EA 133F–03–SE–0235. 11 pp.

Epperly, S. P. and J. Braun-McNeill. 2002. The use of AVHRR imagery and the management of sea turtles interactions in the mid-Atlantic bight. NMFS Southeast Fisheries Science Center. Unpublished.

Keinath, J. A., J. A. Musick, and R. A. Byles. 1987. Aspects of the biology of Virginia's sea turtles: 1979–1986. Virginia J. Sci. 38(4): 329–336.

Lutcavage, M. E. and J. A. Musick. 1985. Aspects of the biology of sea turtles in Virginia. Copeia. 2:449–456.

Lutcavage, M.E., P. Plotkin, B. Witherington, and P.L. Lutz. 1997. Human impacts on sea turtle survival. *In* P.L. Lutz and J.A. Musick (eds). The Biology of Sea Turtles, CRC Press, Boca Raton, Florida. pp 387–409.

Morreale, S. J. and E. A. Standora. 1998. Early life stage ecology of sea turtles in northeastern U.S. waters. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC–413. 49 pp.

Murray, K. T. 2004. Bycatch of sea turtles in the mid-Atlantic sea scallop (*Placopecten magellanicus*) dredge fishery during 2003. 2nd ed. U.S. Dep Commer., Northeast Fisheries Science Center Reference Document 04–11. Northeast Fisheries Science Center. Woods Hole, MA. 25 pp.

Shoop, C.R. and R.D. Kenney. 1992. Seasonal distributions and abundance of loggerhead and leatherback sea turtles in waters of the northeastern United States. Herpetol. Monogr. 6: 43–67.

Spotila, J.R., P.T. Plotkin, and J.A. Keinath. 1998 In water population survey of sea turtles in Delaware Bay. Unpublished Report. Final report to National Marine Fisheries Service, Office of Protected Resources for work conducted under contract number 43AANF600211 and NMFS permit number 1007 by Drexel University, Philadelphia, PA. 21 pp.

List of Subjects

50 CFR Part 222

Endangered and threatened species, Exports, Reporting and Recordkeeping requirements.

50 CFR Part 223

Endangered and threatened species, Exports, Transportation.

Dated: May 23, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 222 is proposed to be amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 222.102, the definition of ''Chain mat'' and ''Dredge or dredge gear'' are added in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Chain mat means a device designed to be installed in a scallop dredge forward of the sweep, as described in 50 CFR 223.206, for the purpose of excluding sea turtles from the dredge.

* * * * *

Dredge or dredge gear, with respect to the fishery operating under the Atlantic Sea Scallop Fishery Management Plan, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of scallops.

* * * * *

For the reasons set forth in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In § 223.205, paragraph (b)(16) is redesignated as (b)(17); paragraph (b)(15) is revised and new paragraph (b)(16) is added to read as follows:

§ 223.205 Sea turtles.

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(b) * * *

(15) Fail to comply with the restrictions set forth in § 223.206(d)(10) regarding pound net leaders;

(16) Fail to comply with the restrictions set forth in § 223.206(d)(11) regarding sea scallop dredges; or

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3. In § 223.206, paragraph (d) introductory text is revised and paragraph (d)(11) is added to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

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(d) *Exception for incidental taking.* The prohibitions against taking in § 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed towards such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(11) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

* * * * *

(11) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*— (i) Gear Modification. During the time period of May 1 through November 30, any vessel with a sea scallop dredge and which is required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, present in waters south of 41° 9.0′ N. lat., from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of ''tickler'' (horizontal) chains and ''vertical'' chains that are evenly spaced and configured in the following manner

dependent on the dredge width: Dredges with a frame width of greater than 13 ft (3.96 m) must use 11 vertical and 6 tickler chains; dredges with a frame width of 11 ft to 13 ft (3.35–3.96 m) must use 9 vertical and 5 tickler chains; dredges with a frame width of 10 ft (3.05 m) to less than 11 ft (3.35 m) must use 7 vertical and 4 tickler chains; dredges with a frame width of less than 10 ft must use 5 vertical and 3 tickler chains. The tickler and vertical chains must be connected to each other with a shackle or link at the intersection point. If a vessel elects to use a different configuration, the length of each side of the square or rectangle formed by the intersecting chains must be less than or equal to 14 inches (35.5 cm). The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

(ii) Any vessel that harvests sea scallops in or from the waters described in (d)(11)(i) must have the chain mat configuration installed on all dredges for the duration of the trip.

[FR Doc. 05–10670 Filed 5–26–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050314071–5071–01; I.D. 030105E]

RIN 0648–AS16

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 6

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would require an owner or operator of a trawler that harvests or possesses brown, pink, or white shrimp (penaeid shrimp) in or from the exclusive economic zone (EEZ) off the southern Atlantic states to obtain a commercial vessel permit for South Atlantic penaeid shrimp; require an owner or operator of a vessel in the South Atlantic rock shrimp or penaeid shrimp fishery to submit catch and effort reports and to carry an observer on selected trips; and require bycatch reduction devices (BRDs) in nets in the rock shrimp fishery. Amendment 6 also proposes to establish stock status determination criteria for South Atlantic penaeid shrimp; revise the specifications of maximum sustainable yield (MSY) and optimum yield (OY) for South Atlantic rock shrimp; revise the stock status determination criteria for South Atlantic rock shrimp; revise the bycatch reduction criterion for the certification of BRDs; and transfer from the Council to the Regional Administrator, Southeast Region, NMFS (RA), responsibilities for the specification of the protocol for testing BRDs. Finally, NMFS proposes to remove provisions of the regulations applicable to other fisheries off the southern Atlantic states that are no longer applicable and to make minor corrections. The intended effects of this rule are to provide additional information for, and improve the effective management of, the shrimp fisheries off the southern Atlantic states and to correct and clarify the regulations applicable to other southern Atlantic fisheries.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on July 11, 2005.

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

- E-mail: *0648–AS16.Proposed@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AS16.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.
- Fax: 727–824–5308.

Copies of Amendment 6, which includes a Final Supplemental Environmental Impact Statement (FSEIS), an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement, may be obtained from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 843–571–4366 or 866–SAFMC–10 (toll free); fax: 843–769–4520; e-mail: *safmc@safmc.net*.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Beverly Smith at the Southeast Regional Office address (above) and to David Rostker, OMB, by e-mail at *David_Rosker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–570–5796; fax: 727–570–5583; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The shrimp fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. NMFS issues this proposed rule to implement Amendment 6 to the FMP.

Amendment 6

Penaeid Shrimp Permits

For a person aboard a trawler to fish for penaeid shrimp in the South Atlantic EEZ or possess penaeid shrimp in or from the South Atlantic EEZ, this rule would require that a valid commercial vessel permit for South Atlantic penaeid shrimp be issued to the vessel and be on board.

An owner of a vessel who desires a commercial vessel permit would be required to obtain a permit application form from and submit it to the RA. Information on the application form would consist of the standard information and documentation required for commercial vessel permits issued by the RA, as specified at 50 CFR 622.4(b)(3). There would be no earned income or landing requirements for these permits. Penaeid shrimp permits would be required in the fishery 120 days after the final rule containing the requirement for permits is published. This time period is considered adequate for vessel owners currently in the fishery to obtain, complete, and submit applications and for the RA to process the applications and issue permits.

As specified at 50 CFR 622.4(d), a fee would be charged for each application for a permit or written request for replacement or transfer of a permit. The applicable fee would be specified on the appropriate form.

Information from permit applications would provide data on the universe of trawlers in the fishery. Such data, in combination with the proposed requirement for the submission of catch and effort reports and the proposed requirement for vessels to carry observers, when requested, would comprise part of the program to monitor and assess bycatch, including protected resources, in the South Atlantic shrimp fisheries. In addition, a known universe of permittees would enhance the ability of fishermen to form constituencies and would contribute to improved communication with owners and operators regarding changes to the regulations, research, and outreach.

Vessel identification requirements apply to all vessels that have been issued permits by the RA. Thus, a vessel that obtains a permit for the South Atlantic penaeid shrimp fishery would be required to display and maintain its official number in the manner prescribed at 50 CFR 622.6(a).

Recordkeeping and Reporting and Observers

This proposed rule would require owners and operators of vessels with permits for South Atlantic rock shrimp or South Atlantic penaeid shrimp who are selected by the Science and Research Director, Southeast Fisheries Science Center, NMFS (SRD) to maintain and submit catch and effort reports. Forms for such reporting would be available from the SRD.

Similarly, this proposed rule would require owners and operators of vessels with permits for South Atlantic rock shrimp or South Atlantic penaeid shrimp to carry NMFS-approved observers on trips selected by the SRD.

Information from permit applications, required reporting, and observers would provide information necessary for effective management of the South Atlantic shrimp fisheries. Those information sources would also comprise part of the program to monitor and assess bycatch in the Atlantic shrimp fisheries. NMFS would also rely on state cooperation, specifically funded projects, and the Atlantic Coastal Cooperative Statistics Program's Release, Discard and Protected Species Module, as that module is implemented.

BRDs

The Council has found that the current regulations do not minimize bycatch in the South Atlantic rock shrimp fishery to the extent practicable, as required by the Magnuson-Stevens Act. Accordingly, Amendment 6 and this rule would require the use of BRDs in that fishery. BRDs are currently required when the on-board or landed catch of penaeid shrimp by a trawler is more than 1 percent, by weight, of all fish comprising its on-board or landed catch. Because most of the trawlers in the South Atlantic rock shrimp fishery exceed this criterion, they are already using BRDs. Thus, this new requirement would impose an additional burden on few vessels.

Currently, the criterion for certification of a BRD for use in the South Atlantic penaeid shrimp fishery is its reduction of bycatch of Spanish mackerel and weakfish when tested under the *Bycatch Reduction Device Testing Protocol Manual*. When the criterion was established, Spanish mackerel and weakfish were overfished. These species are no longer overfished. To better address National Standard 9 of the Magnuson-Stevens Act regarding the minimization of bycatch, and to support the Council's efforts to achieve an ecosystem approach in fisheries management, the Council proposes to change the criterion. As proposed in Amendment 6, for a new BRD to be certified, it must be statistically demonstrated that, when tested under the *Bycatch Reduction Device Testing Protocol Manual*, the BRD can reduce the total weight of finfish by at least 30 percent. A general finfish reduction criterion would allow more flexible testing of BRDs by not emphasizing a particular species, would conform to the criterion currently applicable to the shrimp fishery in the eastern Gulf of Mexico, and would allow certification of two additional BRDs for use in the Atlantic shrimp fisheries.

Currently, under the BRD certification framework in the FMP, changes to the BRD testing protocol require considerable Council action, including involvement of Council advisory panels and committees. The Council has concluded that revisions to the BRD testing protocol, including experimental design issues and statistical procedures, are technical matters that can be addressed appropriately and more efficiently within the expertise of NMFS. Thus, Council consideration of these matters is burdensome, time consuming, and unnecessary. Amendment 6 would revise the BRD certification framework to remove the Council's responsibility for initiating action on these matters and transfer that responsibility to NMFS.

Stock Status Determination Criteria

In accordance with the Magnuson-Stevens Act, the Council proposes to establish objective and measurable criteria for identifying when stocks are overfished and when overfishing is occurring (referred to as stock status determination criteria). Stock status determination criteria consist of a maximum fishing mortality threshold (MFMT) (the level beyond which overfishing is considered to exist) and a minimum stock size threshold (MSST) (the level below which a stock is considered to be overfished). Accordingly, Amendment 6 proposes such criteria as follows.

South Atlantic Penaeid Shrimp

Based on the established values of MSY and OY for brown, pink, and white shrimp, the Council proposes as MFMT a fishing mortality rate that diminishes the stock below the stock abundance that will produce MSY (B_{MSY}) for two consecutive years, and proposes as MSST two thresholds: (1) a diminution to ½ B_{MSY} in one year, or (2) a diminution below B_{MSY} for two consecutive years. In addition, white shrimp would be considered overfished when the overwintering white shrimp population in a state's waters declines by 80 percent or more following a severe winter that results in prolonged cold water temperatures. A proxy for B_{MSY} would be established for each species as follows:

Brown shrimp - 2.000 individuals per hectare.

Pink shrimp - 0.461 individuals per hectare.

White shrimp - 5.868 individuals per hectare.

These proxies are based on the lowest values that produced catches meeting MSY in the following year, as determined using catch per unit of effort information in the 1990–2003 time period.

Rock Shrimp

The Council proposes to revise MSY and OY for rock shrimp so that MSY equals OY and is 4,912,927 lb (2,228,466 kg), heads on, which is the mean total landings of South Atlantic rock shrimp for the period 1986 through 2000. The Council also proposes as MFMT a fishing mortality rate that would lead to annual landings larger than two standard deviations above MSY (14,687,774 lb (6,662,262 kg), heads on) for two consecutive years and as MSST a stock size less than ½ B_{MSY} for two consecutive years. While data are not currently available to precisely estimate B_{MSY}, improved data collection, as addressed in Amendment 6, is expected to lead to the ability to specify B_{MSY} or an appropriate proxy.

Availability of Amendment 6

Additional background and rationale for the measures discussed above are

contained in Amendment 6. The availability of Amendment 6 was announced in the **Federal Register** on March 7, 2005 (70 FR 10931). Written comments on Amendment 6 must be received by May 6, 2005. All comments received on Amendment 6 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Additional Measures Proposed by NMFS

As general housekeeping changes, NMFS proposes to make a minor correction and remove regulatory language that is no longer applicable, as follows:

1. In § 622.4 paragraph (a)(2)(viii)(B) and in § 622.9 paragraph (a), effective date language is no longer applicable and would be removed.

2. In § 622.4 paragraph (r)(12) explains the requirements and procedures for obtaining an initial charter vessel/headboat permit for South Atlantic coastal migratory pelagic fish. Since these initial procedures have been completed, paragraph (r)(12) would be deleted.

3. In § 622.7 paragraph (cc), in the prohibition regarding the required use of permitted operators, the references would be corrected to include all pertinent paragraphs of the regulatory text.

4. In § 622.17 paragraph (a), the provisions for additional permits in the southern zone in the South Atlantic golden crab fishery under the controlled access system have expired and would be removed.

5. Under §§ 622.18 and 622.19, all initial permits for the South Atlantic snapper-grouper fishery and the South Atlantic rock shrimp fishery under their limited access systems have been issued. Accordingly, language regarding initial eligibility and applications would be removed.

6. In Table 4 of Appendix A to Part 622, the listing of South Atlantic snapper-grouper species combines sea basses and groupers under Serranidae. Although both sea basses and groupers are Serranidae, management measures distinguish between them. Accordingly, this rule would separate the Serranidae into Serranidae—Groupers and Serranidae—Sea Basses.

7. At various locations in 50 CFR part 622, ''jewfish'' would be changed to ''goliath grouper'' to conform to the current name for that fish.

Classification

At this time, NMFS has not determined that Amendment 6 is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment periods on Amendment 6 and this proposed rule.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared an FSEIS for Amendment 6; a notice of availability was published on March 25, 2005 (70 FR 15316). The FSEIS evaluates the environmental effects of a number of actions proposed to improve the conservation and management of shrimp stocks. The analysis indicates the preferred alternatives will benefit the quality of the human environment over the long term by simplifying the administrative process associated with approving new bycatch reduction devices, advancing understanding of bycatch and fishery participants, and providing reference points to use in evaluating stock status and fishery performance.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the IRFA follows.

To satisfy the requirements of the Magnuson-Stevens Act, the Council has proposed eight actions to amend the Shrimp Fishery Management Plan of the South Atlantic Region. These actions are intended to improve the identification and quantification of bycatch from brown, pink, or white shrimp (penaeid shrimp) and rock shrimp trawls; improve the identification and quantification of the known universe of penaeid shrimp vessels; reduce the bycatch from rock shrimp trawls; promote the use of more effective BRDs by amending the BRD framework system; and establish status determination criteria, or proxies thereof, as necessary, for penaeid and rock shrimp stocks.

This proposed rule would: (1) require an owner or operator of a trawler that harvests or possesses penaeid shrimp in or from the EEZ off the southern Atlantic states to obtain a commercial vessel permit for South Atlantic penaeid shrimp; (2) require an owner or operator of a vessel in the South Atlantic rock shrimp or penaeid shrimp fishery to submit catch and effort reports and to carry an observer on selected trips; and (3) require BRDs in nets in the rock shrimp fishery. In addition, Amendment 6 would establish stock status determination criteria for South Atlantic penaeid shrimp; revise the specifications of maximum sustainable yield and optimum yield for South Atlantic rock shrimp; revise the stock status determination criteria for South Atlantic rock shrimp; revise the bycatch reduction criterion for the certification of BRDs; and transfer from the Council to the Regional Administrator, Southeast Region, NMFS (RA), responsibilities for the specification of the protocol for testing BRDs. NMFS also proposes to remove provisions of the regulations applicable to other fisheries off the southern Atlantic states that are no longer applicable, and proposes to make minor corrections. The intended effects of this rule are to provide additional information for, and otherwise improve the effective management of, the shrimp fisheries off the southern Atlantic states, and to correct and clarify the regulations applicable to other southern Atlantic fisheries. The Magnuson-Stevens Act, as amended, provides the legal basis for the rule.

The proposed rule would require that any trawler fishing for or in possession of penaeid shrimp in or from Federal waters be required to possess a Federal penaeid shrimp permit and to provide the information specified on the permit application. Selected vessels would also have to complete logbook forms at the end of each trip. The information required for the permit application and logbook are standard information and data elements necessary for the routine operation of a fishing business and are not expected to impose any special reporting or recordkeeping requirements.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The measures in this proposed rule would apply to the commercial harvesting sector active in the penaeid and rock shrimp fisheries in the South Atlantic. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to $3.5 million per year.

It is estimated that there were at least 2,129, 1,835, and 1,731 commercial entities harvesting shrimp in the South Atlantic during 2000, 2001, and 2002, respectively. The average annual gross revenue per vessel from all commercial fishing activities by these vessels for 2000–2002 is estimated to be $76,879,

$67,706, and $66,853, respectively. The rock shrimp fishery is a sub-sector of the shrimp fishery. The number of active vessels in this sector was 182, 159, and 148 for 2000–2002, respectively. Since July 2003, a limited access rock shrimp endorsement has been required onboard a vessel to fish for or possess rock shrimp in the South Atlantic EEZ off Georgia and Florida. To date, 145 limited access endorsements have been issued. The average revenue per rock shrimp vessel from 2000–2002 is estimated to be $241,079, $239,861, and $192,502, respectively. The highest gross revenue observed for a single vessel in the shrimp fishery during 2000–2002, regardless of species focus, did not exceed $1.0 million. There are insufficient data regarding potential ownership affiliation between vessels to identify whether an individual entity controlled sufficient numbers of vessels to achieve large entity status. Therefore, it is assumed that each vessel represents a separate business entity and, based on the revenue profiles provided above, all entities in the South Atlantic shrimp fishery are assumed to be small entities.

The proposed actions to implement a Federal penaeid shrimp permit program, require logbook reporting, and require the use of BRDs on the rock shrimp vessels are expected to have direct impacts on the entities that participate in these fisheries. All the other proposed actions are either administrative or establish fishery benchmark criteria that would not directly affect fishery participants.

The requirement for permits in the penaeid shrimp fishery is expected to affect 1,380 to 1,898 vessels. The lower bound assumes that only those commercial shrimp vessels that operate in state offshore and Federal waters in the South Atlantic would apply for the permit, and is the average number of vessels estimated to operate in these waters per year during 2000–2002. The upper bound assumes that all commercial shrimp vessels that operate in the South Atlantic, regardless of whether they typically fish in inshore or offshore waters, would apply for the permit, and is the average number of vessels estimated to operate per year during 2000–2002. It is expected that all rock shrimp vessels would apply for the penaeid shrimp permit, and the estimates include these vessels. The cost of the penaeid shrimp permit would be either $50 or $20, depending upon whether the permit is the only permit held by the vessel, therefore costing $50, or whether it represents an additional permit, thus costing only $20. Since all vessels operating in the rock shrimp fishery are currently already required to have a rock shrimp permit, the penaeid shrimp permit would cost only $20 for these vessels.

Under the proposed rule, a sample of vessels that are issued the Federal penaeid shrimp permit would be selected for reporting through a logbook program. The sample size has not been determined and, hence, it is unknown how many small entities would have to comply with this new reporting requirement. A final logbook form for this fishery has not been developed. Potential data elements would be expected to include, but not necessarily be limited to, vessel name, vessel identifier, number of nets, type of net, size of net, type of bycatch reduction device, number of tows, length of tows (in hours), location of tow (either in terms of latitude and longitude or statistical area and depth), and an estimate of catch. The logbook would be completed on a daily basis. Completion of the logbook is estimated to take 10 minutes per daily form. Based on data from the Florida trip ticket program, the average east coast shrimp vessel averages 61.5 fishing days per year. At 10 minutes per day to complete the logbook, the average annual reporting burden per vessel would be 615 minutes, or 10.25 hours. Using the average wage of first line supervisors/managers in the fishing, forestry, and farming industries from the Bureau of Labor Statistics, $18.14, the average annual opportunity cost per vessel for logbook reporting would be approximately $185.94 ($18.14/hour X 10.25 hours). Completion of the form is not expected to adversely affect other trip or maintenance activities.

The proposed action to require BRDs in the rock shrimp fishery is expected to affect the profitability of an estimated 43 vessels, or approximately 30 percent of this sub-sector of the shrimp fishery. The other vessels in this sub-sector are assumed to already utilize BRDs due to their concurrent participation in the penaeid shrimp fishery, which already requires the use of BRDs if the proportion of penaeid shrimp exceeds 1 percent. The use of BRDs is estimated to result in a maximum of 3 percent shrimp loss on rock shrimp trips. This amounts to a reduction of $1,382 in gross revenue per vessel, or 0.6 percent reduction in revenue per affected vessel in the rock shrimp fishery.

The determination of significant economic impact can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: Will the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All entities participating in the respective shrimp fisheries are considered small entities, so the issue of disproportionality does not arise. However, there is a high degree of diversity among the vessels in the shrimp fleet in terms of vessel length, and variation in overall gross fishing income, vessel operating and fixed costs, and dependence on income from shrimp harvest are all related to vessel length. Nevertheless, as discussed below, the costs of the proposed actions are not expected to be great enough to affect competitive advantage.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? The current profitability of vessels in the commercial shrimp fishery that are likely to be affected by the measures in this amendment is unknown. Existing studies on the shrimp fleet in the South Atlantic are dated and not reflective of the current conditions in this fishery. Imports have had a substantial negative effect on the profitability of vessels in the domestic shrimp industry since the 1990s. A study on the penaeid shrimp fishery off South Carolina during 1999 indicated that many vessels were operating on break-even levels of activity. This fishery was classified into three operational size categories based on differences in operating costs, profit margins, and ability of the vessel owner to make input substitutions. Small vessels (less than 30 ft (9 m)) had an average annual profitability of $2,533, medium vessels $10,086, and large vessels $8,639. It is not known whether these data were representative of the shrimp fleet in the other South Atlantic states. Regardless, current profit margins are expected to be lower as a result of the decline in prices since 1999 and increases in fuel prices and other input costs.

The average annual revenue from all commercial fishing activities for shrimp vessels operating in the South Atlantic during 2000–2002 ranged from $70,749 for vessels that fished in either or both inshore and offshore waters to $81,362 for vessels that operated only in offshore waters. The annual cost of a permit would be only $50 if the vessel obtained a single permit, or $20 if the vessel possessed multiple permits and thus would represent a small additional operational cost. A time burden would also be imposed in order to complete the permit application form. This time burden is estimated to be 0.33 hours per application, with an opportunity cost of approximately $6. There would not, however, be any additional actual expenditures other than to cover

postage. The burden associated with logbook reporting is similarly a time cost, estimated to have an opportunity cost of $185.94 per vessel, as discussed above, and is not expected to adversely affect operation or productivity of the vessel and, thus, not impose any direct financial costs.

The proposed BRD requirement for the rock shrimp sector is expected to impact those vessels that do not currently utilize BRDs. As previously stated, it is estimated that the majority of vessels in this fishery currently have BRDs, but that an estimated 43 vessels would be affected by the proposed action. The estimated cost of the BRD-induced shrimp loss is $1,382 in gross revenue per vessel, or a 0.6 percent reduction in revenue per affected vessel. Additionally, BRDs are estimated to cost $20-$100 each, or $80-$400 per vessel since most rock shrimp vessels pull four nets. Combining the revenue loss ($1,382) and penaeid shrimp permit cost ($20 since the vessel would already have the rock shrimp permit), and assuming the maximum BRD cost ($400), these 43 rock shrimp vessels would be expected to incur $1,802 in reduced revenues or increased costs, an amount less than 1 percent of average annual revenues. It should be noted, however, that ex-vessel shrimp price reductions and fuel price increases since 2002 have substantially reduced the profitability of shrimp vessels, thereby increasing the potential net impact of the BRD requirements of the proposed action.

Three alternatives were considered to the proposed action to require a penaeid shrimp permit. The status quo alternative would not require a permit and, therefore, would eliminate all costs associated with the permit. This alternative, however, would not meet the Council's objective of allowing for the efficient and accurate identification of vessels in the shrimp fishery, and the indirect economic benefits from better data collection and management would not be realized. Two alternatives to the proposed action would require shrimp trawlers to purchase a Federal penaeid shrimp permit, like the proposed action, but would allow exemptions for vessels in transit with properly stowed gear. These two alternatives, however, differ in the qualification requirements, one alternative granting a permit for anyone who applied, as would the proposed action, while the other alternative would require documentation of a state permit. Neither of these alternatives would reduce the costs to those who operate in the South Atlantic fishery but would eliminate the additional permit cost for vessels that operate outside the region and wish only to transit or land shrimp in the South Atlantic. Both alternatives, however, would produce law enforcement loopholes that could lower compliance rates, thus jeopardizing the expected benefits of the proposed action and failing to meet the Council's objectives.

Three alternatives were considered to the proposed logbook requirement. The status quo alternative would not support the collection of necessary bycatch information and would not, therefore, meet the Council's objectives. The remaining two alternatives would impose time costs on the fishery participants comparable to those of the proposed action and, thus, would not lessen the impact on the small business entities. The proposed action, however, would provide a more systematic interim data collection approach until the more comprehensive Atlantic coast-wide bycatch program developed by the Atlantic Coastal Cooperative Statistics Program is funded and implemented.

Four alternatives were considered to the proposed BRD requirement for rock shrimp vessels. The no action alternative would not provide any reduction in bycatch and would not, therefore, meet the Council's objectives. The remaining three alternatives would impose seasonal closures (fall, winter, or summer) to address the bycatch problem. Each of these alternatives would result in greater economic losses than the proposed action, ranging from a $5,901 reduction in gross revenues per vessel per year for a winter closure to $42,363 for a summer closure, compared to an estimated maximum loss of $1,382 under the proposed BRD requirement. The projected losses under the summer and fall closures would likely be sufficiently great to force some vessels to exit the industry. While seasonal closures would likely result in larger total bycatch reductions than the proposed action, the proposed action better meets the Council's objectives while minimizing the social and economic consequences.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA applicable to vessels in the South Atlantic shrimp fishery--namely, requirements for: (1) submission of applications for commercial vessel permits for the penaeid shrimp fishery; (2) identification of such permitted vessels, i.e., vessel marking requirements; (3) submission of logbooks by permitted vessels in the rock shrimp and penaeid shrimp fisheries; (4) notification of vessel trips in the rock shrimp and penaeid shrimp fisheries related to vessel observers; and (5) applications for testing proposed bycatch reduction devices, conducting such tests, and reporting the results of tests, as prescribed by the *Bycatch Reduction Device Testing Protocol Manual*. These requirements have been submitted to OMB for approval. The public reporting burdens for these collections of information are estimated to average 20 minutes per response for each permit application, 45 minutes for each vessel to be identified, 10 minutes for each logbook submission, 5 minutes for each notification of a vessel trip, and 186 hours per respondent for the requirements prescribed by the *Bycatch Reduction Device Testing Protocol Manual*. These estimates of the public reporting burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 23, 2005.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.2, the definition of ''Penaeid shrimp trawler'' is revised and the definition of ''Penaeid shrimp'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Penaeid shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus*.

(2) Pink shrimp, *Farfantepenaeus duorarum*.

(3) White shrimp, *Litopenaeus setiferus*.

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of penaeid shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

* * * * *

3. In § 622.4, in the first sentence of paragraph (a)(2)(viii)(B), the phrase ''effective July 15, 2003,'' is removed; paragraph (r)(12) is removed; and paragraph (a)(2)(xiii) is added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(xiii) *South Atlantic penaeid shrimp.* For a person aboard a trawler to fish for penaeid shrimp in the South Atlantic EEZ or possess penaeid shrimp in or from the South Atlantic EEZ, a valid commercial vessel permit for South Atlantic penaeid shrimp must have been issued to the vessel and must be on board.

* * * * *

4. In § 622.5, the first sentence of paragraph (a)(2)(i) is revised and paragraph (a)(1)(vii) is added to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(vii) *South Atlantic rock or penaeid shrimp.* The owner or operator of a vessel for which a commercial permit for South Atlantic rock shrimp or South Atlantic penaeid shrimp has been issued, as required under § 622.4(a)(2)(viii) or (xiii), respectively, or whose vessel fishes for or lands South Atlantic rock shrimp or South Atlantic penaeid shrimp in or from state waters adjoining the Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(2) * * *

(i) Completed fishing records required by paragraphs (a)(1)(i), (ii), (iv), (vi), and (vii) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. * * *

* * * * *

5. In § 622.7, paragraphs (aa) and (cc) are revised to read as follows:

§ 622.7 Prohibitions.

* * * * *

(aa) Falsify information submitted regarding an application for testing a BRD or regarding testing of a BRD, as specified in §§ 622.41(g)(3)(i) or (h)(3).

* * * * *

(cc) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in § 622.4(a)(5)(i) through (iv).

* * * * *

6. In § 622.8, paragraph (a)(3) is added to read as follows:

§ 622.8 At-sea observer coverage.

(a) * * *

(3) *South Atlantic rock or penaeid shrimp.* A vessel for which a Federal commercial permit for South Atlantic rock shrimp or South Atlantic penaeid shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage.

* * * * *

7. In § 622.9, the first sentence of paragraph (a) is revised to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) *Requirement for use.* An owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp must ensure that such vessel has a NMFS-approved, operating VMS on board when on a trip in the South Atlantic. * * *

* * * * *

8. In § 622.17, paragraph (a) is revised to read as follows:

§ 622.17 South Atlantic golden crab controlled access.

(a) *General.* In accordance with the procedures specified in the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region, initial commercial vessel permits have been issued for the fishery. All permits in the fishery are issued on a fishing-year (calendar-year) basis. No additional permits may be issued except for the northern zone as follows:

(1) The RA will issue up to two new vessel permits for the northern zone. Selection will be made from the list of historical participants in the South Atlantic golden crab fishery. Such list was used at the October 1995 meeting of the South Atlantic Fishery Management Council and was prioritized based on pounds of golden crab landed, without reference to a specific zone. Individuals on the list who originally received permits will be deleted from the list.

(2) The RA will offer in writing an opportunity to apply for a permit for the northern zone to the individuals highest on the list until two individuals accept and apply in a timely manner. An offer that is not accepted within 30 days after it is received will no longer be valid.

(3) An application for a permit from an individual who accepts the RA's offer must be received by the RA no later than 30 days after the date of the individual's acceptance. Application forms are available from the RA.

(4) A vessel permit for the northern zone issued under paragraph (a)(1) of this section, and any successor permit, may not be changed to another zone. A successor permit includes a permit issued to that vessel for a subsequent owner and a permit issued via transfer from that vessel to another vessel.

* * * * *

9. § 622.18 is revised to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

(a) *General.* The only valid commercial vessel permits for South Atlantic snapper-grouper are those that have been issued under the limited access criteria specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. A commercial vessel permit for South Atlantic snapper-grouper is either a transferable commercial permit or a trip-limited commercial permit.

(b) *Transfers of permits.* A snapper-grouper limited access permit is valid only for the vessel and owner named on the permit. To change either the vessel or the owner, an application for transfer must be submitted to the RA.

(1) *Transferable permits.* (i) An owner of a vessel with a transferable permit may request that the RA transfer the permit to another vessel owned by the same entity.

(ii) A transferable permit may be transferred upon a change of ownership of a permitted vessel with such permit from one to another of the following: husband, wife, son, daughter, brother, sister, mother, or father.

(iii) Except as provided in paragraphs (b)(1)(i) and (ii) of this section, a person desiring to acquire a limited access, transferable permit for South Atlantic snapper-grouper must obtain and exchange two such permits for one new permit.

(iv) A transfer of a permit that is undertaken under paragraph (b)(1)(ii) of this section will constitute a transfer of the vessel's entire catch history to the new owner.

(2) *Trip-limited permits.* An owner of a vessel with a trip- limited permit may request that the RA transfer the permit to another vessel owned by the same entity.

(c) *Renewal.* NMFS will not reissue a commercial vessel permit for South Atlantic snapper-grouper if the permit is revoked or if the RA does not receive an application for renewal within 60 days of the permit's expiration date.

10. § 622.19 is revised to read as follows:

§ 622.19 South Atlantic rock shrimp limited access.

(a) *Applicability.* For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board.

(b) *Transfer of an endorsement.* A limited access endorsement for South Atlantic rock shrimp is valid only for the vessel and owner named on the permit/endorsement. To change either the vessel or the owner, an application for transfer must be submitted to the RA. An owner of a vessel with an endorsement may request that the RA transfer the endorsement to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of an endorsement under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(c) *Renewal.* The RA will not reissue a limited access endorsement for South Atlantic rock shrimp if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(d) *Non-renewal of inactive endorsements.* In addition to the sanctions and denials specified in § 622.4(j)(1), a limited access endorsement for South Atlantic rock shrimp that is inactive for a period of 4 consecutive calendar years will not be renewed. For the purpose of this paragraph, ''inactive'' means that the vessel with the endorsement has not landed at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

(e) *Reissuance of non-renewed permits.* A permit that is not renewed under paragraph (d) of this section will be made available to a vessel owner randomly selected from a list of owners who had documented landings of rock shrimp from the South Atlantic EEZ prior to 1996 but who did not qualify for an initial limited access endorsement. Owners' names have been placed on the list in accordance with the procedures specified in the FMP for the Shrimp Fishery of the South Atlantic Region.

11. In § 622.41, paragraph (g) is revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Rock and penaeid shrimp in the South Atlantic*—(1) *BRD requirements.* Except as exempted in paragraph (g)(4) of this section, BRDs are required as follows:

(i) On a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed.

(ii) On a vessel that fishes for or possesses rock shrimp in the South Atlantic EEZ, each trawl net or try net that is rigged for fishing must have a certified BRD installed.

(iii) A trawl net or try net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(2) *Certified BRDs.* The following BRDs are certified for use in the South Atlantic EEZ. Specifications of these certified BRDs are contained in Appendix D of this part.

(i) Extended funnel.

(ii) Expanded mesh.

(iii) Fisheye.

(iv) Gulf fisheye.

(v) Jones-Davis.

(3) *Certification of additional BRDs.* (i) A person who proposes a BRD for certification for use in the South Atlantic EEZ must submit an application to test such BRD, conduct the testing, and submit the results of the test in accordance with the *Bycatch Reduction Device Testing Protocol Manual*, which is available from the RA upon request.

(ii) For a new BRD to be certified, it must be statistically demonstrated that in testing under the *Bycatch Reduction Device Testing Protocol Manual* the BRD can reduce the total weight of finfish taken as bycatch by at least 30 percent.

(iii) If a BRD meets the certification criterion, as determined under the testing protocol, NMFS will publish a notice in the **Federal Register** adding the BRD to the list of certified BRDs in paragraph (g)(2) of this section and providing the specifications for the newly certified BRD, including any special conditions deemed appropriate based on the certification testing results.

(4) *Limited exemption.* A rock or penaeid shrimp trawler that is authorized by the RA to test a BRD in the EEZ for possible certification, has such written authorization on board, and is conducting such test in accordance with the *Bycatch Reduction Device Testing Protocol Manual* is granted a limited exemption from the BRD requirement specified in paragraph (g)(1) of this section. The exemption from the BRD requirement is limited to those trawls that are being used in the certification trials. All other trawls rigged for fishing must be equipped with certified BRDs.

* * * * *

12. In Table 4 of Appendix A to Part 622—South Atlantic Snapper–Grouper, the heading and species listed under Serranidae—Sea Basses and Groupers are revised to read as follows:

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER–GROUPER

* * * * * * *

Serranidae—Groupers

Rock hind, *Epinephelus adscensionis*

Graysby, *Epinephelus cruentatus*

Speckled hind, *Epinephelus drummondhayi*

TABLE 4 OF APPENDIX A TO PART 622—SOUTH ATLANTIC SNAPPER–GROUPER—Continued

Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Goliath grouper, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteroperca venenosa*
Serranidae—Sea Basses
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*
* * * * * * *

PART 622—[AMENDED]

13. In part 622, revise all references to ''jewfish'' to read ''goliath grouper''.

[FR Doc. 05–10671 Filed 5–26–05; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 052405A]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Proposed rule; public hearings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to solicit comments on the Draft Amendment to the FMPs for Reef Fish (Amendment 25) and Coastal Migratory Pelagics (CMP) (Amendment 17) for extending the Charter Vessel/Headboat Permit Moratorium and Draft Amendment 18A to the Reef Fish Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, and to conduct a workshop on potential interim measures to reduce recreational red grouper harvest in the Gulf of Mexico, with associated impacts on gag and other groupers.

DATES: The public hearings and workshops will be held from June 13 through June 29, 2005, at 10 locations throughout the Gulf of Mexico. For specific dates and times see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: *Meeting addresses:* The public hearings and workshops will be held in Port Isabel, Galveston, and Port Aransas, Texas; St. Rose, Louisiana; Biloxi, Mississippi; Orange Beach, Alabama; and Destin, Madeira Beach, Naples, and Key West, Florida. For specific locations see **SUPPLEMENTARY INFORMATION.**

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Stu Kennedy, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813.228.2815.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene pubic hearings to solicit comments on two issues in the following order:

1. Draft Amendment to the FMPs for Reef Fish (Amendment 25) and Coastal Migratory Pelagics (Amendment 17) for extending the Charter Vessel/Headboat Permit Moratorium. Amendments establishing the charter vessel/headboat permit moratorium for the CMP fishery and the Reef Fish fishery that were approved by NOAA Fisheries on May 6, 2003, and implemented on June 16, 2003 (68 FR 26280). The intended effect of these Amendments was to cap the number of for-hire vessels operating in these two fisheries at the current level (as of March 29, 2001) while the Council evaluated whether limited access programs were needed to constrain effort. In this amendment, the Council is considering allowing the permit to expire on June 16, 2006 or extending the moratorium on for-hire Reef Fish and CMP permits for a finite period of time or indefinitely.

2. Draft Amendment 18A to the Reef Fish Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico: Reef Fish Amendment 18A deals with enforcement and monitoring issues, including simultaneous commercial and recreational harvest on a vessel (to improve enforceability of prohibition on sale of recreationally caught reef fish), maximum crew size on a Coast Guard inspected vessel when fishing commercially (to resolve a conflict between NMFS maximum crew size and USCG minimum crew size regulations), use of reef fish for bait, and vessel monitoring system (VMS) requirements on commercial reef fish vessels. Amendment 18A also addresses administrative changes to the framework procedure for setting total allowable catch (TAC) of reef fish, and measures to reduce bycatch and bycatch mortality of endangered sea turtles and smalltooth sawfish taken inadvertently in the commercial and charter/headboat reef fish fishery.

After the public hearings, workshops will be held to address potential interim measures to reduce recreational red grouper harvest in the Gulf of Mexico, with associated impacts on gag and other groupers: Secretarial Amendment 1 to the Reef Fish Fishery Management Plan of the Gulf of Mexico established a rebuilding plan and 6.56 mp GW allowable biological catch for red grouper. During 2003 and 2004, recreational red grouper landings exceeded the 1.25 mp GW recreational allocation. In March 2005, the Gulf Council requested NMFS implement an interim rule to reduce the 2005 recreational red grouper harvest to levels in Secretarial Amendment 1. The purpose of this action is to establish interim regulations that reduce the likelihood overfishing for red grouper will occur in 2005. Possible measures include changes to the red grouper and aggregate grouper bag limits, changes in

size limit, and a closed season for all groupers.

The public hearings and workshops will begin at 6 p.m. and conclude no later than 10 p.m. at each of the following locations:

Monday, June 13, 2005, New Orleans Airport Ramada Inn and Suites, 110 James Drive East, St. Rose, Louisiana 70087, 504–466–1355.

Tuesday, June 14, 2005, Mississippi Department of Marine Resources, 1141 Bayview Drive, Biloxi, Mississippi 39530, 228–374–5000.

Wednesday, June 15, 2005, Orange Beach Community Center, 4849 Wilson Boulevard, Orange Beach, Alabama 36561, 251–981–6028.

Thursday, June 16, 2005, Destin Community Center, 101 Stahlman Avenue, Destin, Florida 32541, 850–654–5184.

Monday, June 20, 2005, The San Luis Resort, 5222 Seawall Boulevard, Galveston Island, Texas 77551, 409–744–1500.

Wednesday June 22, 2005, University of Texas Marine Science Institute Auditorium, 750 Channel View Drive, Port Aransas, Texas 78373, 361–749–6711.

Thursday, June 23, 2005, Port Isabel Community Center, 213 Yturria, Port Isabel, Texas 78578, 956–943–2682.

Monday, June 27, 2005, DoubleTree Grand Key Resort, 3990 S. Roosevelt Boulevard, Key West, Florida 33040, 888–310–1540.

Tuesday, June 28, 2005, Hilton, 5111 Tamiami Trail North, Naples, Florida 34103, 239–430–4900.

Wednesday, June 29, 2005, City of Madeira Beach, 300 Municipal Drive, Madeira Beach, Florida 33708, 727–391–9951.

A copy of the Amendments and related materials can be obtained by calling the Council office at 813.228.2815.

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by June 6, 2005.

Dated: May 24, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–10665 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 102
Friday, May 27, 2005

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–003N]

International Standard-Setting Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809. This notice also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers the time periods from June 1, 2004, to May 31, 2005, and June 1, 2005, to May 31, 2006, seeks comments on standards currently under consideration and recommendations for new standards.

ADDRESSES: Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 05–003N. Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee. All comments submitted will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005_notices_index/.*

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., United States Manager for Codex, U.S. Department of Agriculture, Office of the Under Secretary for Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; (202) 205–7760. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in Attachment 2 to this notice.) Documents pertaining to Codex are accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.* The U.S. Codex Office also maintains a Web site at *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.*

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization, Codex, World Organization for Animal Health, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of SPS standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Administrator, Food Safety and Inspection Service (FSIS), the responsibility to inform the public of the SPS standard-setting activities of Codex. The FSIS Administrator has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office, FSIS.

Codex was created in 1962 by two U.N. organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

As the agency responsible for informing the public of the SPS standard-setting activities of Codex, FSIS publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. The SPS standards under consideration or planned for consideration; and
2. For each SPS standard specified:
   a. A description of the consideration or planned consideration of the standard;
   b. Whether the United States is participating or plans to participate in the consideration of the standard;
   c. The agenda for United States participation, if any; and
   d. The agency responsible for representing the United States with respect to the standard.

To obtain Copies of those Standards listed in Attachment 1 that are under

consideration by Codex, please contact the Codex delegate or the U.S. Codex Office. This notice also solicits public comment on those standards that are currently under consideration or planned for consideration and recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States' delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States' delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States' delegation activities to interested parties. This information will include the current status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. In addition, the U.S. Codex Office makes much of the same information available through its web page, *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.* Please visit the web page or notify the appropriate U.S. delegate or the Office of U.S. Codex Alimentarius, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, if you would like to access or receive information about specific committees.

The information provided in Attachment 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 2004 to May 31, 2005, and June 1, 2005 to May 31, 2006. In addition, the following attachments are included:

Attachment 2 List of U.S. Codex Officials (includes U.S. delegates and alternate delegates)
Attachment 3 Timetable of Codex Sessions (June 2004 through June 2006)
Attachment 4 Definitions for the Purpose of Codex Alimentarius
Attachment 5 Part 1—Uniform Procedure for the Elaboration of Codex Standards and Related Texts
Part 2—Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts
Attachment 6 Nature of Codex Standards

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on May 24, 2005.

F. Edward Scarbrough,

United States Manager for Codex.

Attachment 1: Sanitary and Phytosanitary Activities of Codex

Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Twenty-Eighth Session July 4–9, 2005 in Rome, Italy. At that time it will consider procedural matters, and the standards, codes of practice, and related matters brought to its attention by the general subject committees, commodity committees, *ad hoc* Task Forces and member delegations. It will also consider options to implement recommendations from the review of Codex committee structure and mandates of Codex committees and task forces, as well as budgetary and strategic planning issues. At this Session, the Commission will elect a Chair and three Vice Chairs. The issue of Codex interaction with other international organizations will be discussed.

Prior to the Commission meeting, the Executive Committee will have met at its Fifty-fifth Session on February 9–11, 2005 and its Fifty-sixth Session on June 30–July 2, 2005. It is composed of the chairperson, vice-chairpersons, seven members elected from the Commission, one from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and South-West Pacific. In addition, regional coordinators from the six regional committees attend as observers. It will consider the Codex Strategic Plan 2008–1013; review the Codex committee structure and mandate of Codex committees and task forces; review matters arising from reports of Codex Committees, proposals for new work, and standards management issues; consider the implementation of the Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards; and review the Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods determines priorities for the consideration of residues of veterinary drugs in foods and recommends Maximum Residue Limits (MRLs) for veterinary drugs. A veterinary drug is defined as any substance applied or administered to a food producing animal, such as meat or dairy animals, poultry, fish or bees, for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

A Codex Maximum Limit for Veterinary Drugs (MRLVD) is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is adopted by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food. An MRLVD is based on the Acceptable Daily Intake (ADI) and indicates the amount of residue in food that is considered to be without appreciable toxicological hazard. An MRLVD also takes into account other

relevant public health risks as well as food technological aspects. When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

Acceptable Daily Intake (ADI): An estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, that can be ingested daily over a lifetime without appreciable health risk (standard man = 60 kg).

The committee met in Arlington, VA (USA), October 25–28, 2004. The following will be under consideration by the Commission at its 28th Session in July 2005. The relevant document is ALINORM 5/28/31.

Draft MRLs at Step 8:

- Cyhalothrin.
- Flumequine.
- Neomycin.
- Dicyclanil.

Proposed Draft MRLs at Step 5/8:

- Imidocarb.

Proposed Draft Code of Practice to Minimize and Contain Antimicrobial Resistance at Step 5/8.

Proposed Draft MRLs at Step 5:

- Flumequine (in black tiger shrimp).
- Pirlimycin.
- Cypermethrin and alpha-cypermethrin.
- Doramectin (in cow's milk).

The Committee continues to work on:

- Draft MRLs for Trichlorfon (metrifonate) at step 7.
- Proposed Draft MRLs for Ractopamine at step 4.
- Proposed Draft Revised Guidelines for the Establishment of a Regulatory Program for Control of Veterinary Drug Residues in Foods.
- Discussion paper on Risk Management Methodologies, including Risk Assessment Policies in the Codex Committee on Residues of Veterinary Drugs in Foods.
- Proposed Draft Revised Part I, II, III of Guidelines for the Establishment of a Regulatory Program for the Control of Veterinary Drug Residues in Foods.
- Priority List of Veterinary Drugs Requiring Evaluation or Reevaluation.
- List of Methods of Analysis for Veterinary Drug Residues and Identification of Routine Methods of Analysis.
- Recommendations on Residues of Veterinary Drugs without ADI/MRL (Prioritization of work).

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Additives and Contaminants

The Codex Committee on Food Additives and Contaminants (CCFAC) (a) establishes or endorses permitted maximum or guideline levels for individual food additives, contaminants, and naturally occurring toxicants in food and animal feed; (b) prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); (c) recommends specifications of identity and purity for food additives for adoption by the Commission; (d) considers methods of analysis for food additives and contaminants; and (e) considers and elaborates standards and codes for related subjects such as labeling of food additives when sold as such and food irradiation. The committee met in The Hague, The Netherlands, April 25–29, 2005. The following matters are under consideration by the Commission at its 28th Session in July 2005. The relevant document is ALINORM 5/28/12.

- Revised Terms of Reference of the Codex Committee on Food Additives and Contaminants.
- Terms of Reference for the FAO/WHO Joint Expert Consultation to Conduct a Comprehensive Assessment of Use of Active Chlorine.

Food Additives

To be considered at Step 8:

- General Standard for Food Additive (GSFA): Draft Food Additive Provisions in Tables 1 and 2.
- Amendment to Annex B (Food Category System) of the GSFA (coconut water).

To be considered at Step 5/8:

- General Standard for Food Additives: Proposed Draft Food Additive Provisions in Tables 1, 2 and 3.
- Advisory Specifications for the Identity and Purity of Food Additives.
- Proposed Draft Revisions to the Codex International Numbering System for Food Additives.

To be considered at Step 5:

- Proposed Draft Revised Preamble to the GSFA, including diagram.

To be considered for Revocation and Discontinuation of work:

- General Principles for the Use of Food Additives.
- Proposed Amendments to the Codex Procedural Manual related to the revocation of the General Principles for the Use of Food Additives.
- Proposed Draft and Draft Food Additive Provisions in the GSFA.

To be considered for New Work:

- Revision of Class Names and the International Numbering System for Food Additives.

The Committee is continuing work on:

- General Standard for Food Additives: Draft Food Additive Provisions (in Tables 1, 2 and 3).
- General Standard for Food Additives: Revisions to the Preamble to clarify relationship between the General Standard and commodity standards.
- International Numbering System.
- Specifications for the Identity and Purity of Food Additives.
- Inventory of Processing Aids.
- Discussion Paper on Flavoring Agents.

Contaminants

To be considered at Step 8:

- Draft Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Tree Nuts.
- Draft Code of Practice for the Prevention and Reduction of Inorganic Tin Contamination in Canned Foods.
- Draft Maximum Levels for Cadmium in wheat grain, potato, stem and root vegetables, leafy vegetables, and other vegetables.

To be considered at Step 5/8:

- Proposed Amendment to the Preamble of the Codex General Standard for Contaminants and Toxins in Foods (GSCTF).

To be considered at Step 5:

- Proposed Draft Maximum Level for Aflatoxin in unprocessed almonds, hazelnuts and pistachios.
- Proposed Draft Maximum Levels for Cadmium in rice, cephalopod (excluding viscera), and marine bivalve mollusks (excluding oysters and scallops).

To be considered for Revocation:

- List of Maximum Levels for Contaminants and Toxins Contained in Codex Commodity Standards and Relevant Standards and Texts.

To be considered for New Work:

- Appendix to the Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Tree Nuts to address additional measures for the prevention and reduction of aflatoxins in Brazil nuts.

The Committee is continuing work on:

- Maximum levels for aflatoxin in processed almonds, hazelnuts, and pistachios.
- Discussion Paper on Aflatoxin Contamination in Brazil Nuts.
- Proposed draft sampling plan for Aflatoxin contamination in Almonds, Brazil nuts, Hazelnuts and Pistachios.

• Discussion paper on Deoxynivalenol (DON) Contamination in Cereals.
• Maximum Level for lead in fish.
• Proposed Draft Code of Practice for Source Directed Measures to Reduce Dioxin and Dioxin-like PCB Contamination in Foods.
• Discussion paper with proposals for maximum levels for 3-monochloropropanediol in acid-hydrolyzed vegetable protein (acid-HVP) and acid-HVP containing foods.
• Discussion paper on acrylamide, including a project paper for new work and an outline of a proposed draft code of practice.
• Draft Revised Guideline Levels for Radionuclides in Foods Following Accidental Nuclear Contamination for Use in International Trade, Including Guideline Levels for Long-Term Use.
• Discussion paper on polyaromatic hydrocarbons, including a project paper for new work and an outline of a proposed draft code of practice.
• Discussion paper on methylmercury in fish.
• Discussion paper on Code of Practice for the Prevention and Reduction of Ochratoxin A (OTA) Contamination in Coffee and Cocoa.
• Discussion paper on Maximum level of Ochratoxin A in Wine.

General Issues

• Priority List of Food Additives, Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by JECFA.

Responsible Agency: HHS/FDA
U.S. Participation: Yes.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues recommends to the Codex Alimentarius Commission establishment of maximum limits for pesticide residues for specific food items or in groups of food. A Codex Maximum Residue Limit for Pesticide (MRLP) is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. Foods derived from commodities that comply with the respective MRLPs are intended to be toxicologically acceptable, that is, consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI,* should indicate that foods complying with Codex MRLPs are safe for human consumption.

Codex MRLPs are primarily intended to apply in international trade and are derived from reviews conducted by the Joint Meeting on Pesticide Residues (JMPR) following:

(a) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices (GAP). Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices, and

(b) Toxicological assessment of the pesticide and its residue.

The committee met in The Hague, The Netherlands, April 18–23, 2005. The following items will be considered by the Commission at its 28th Session in July 2005. The relevant document is ALINORM 05/28/24.

To be considered at Step 8:
• Draft and Draft Revised Maximum Residue Limits.

To be considered at Step 8(I):
Bifenazate.
Fludioxonil.
Trifloxystrobin.

To be considered at Step 5/8:
• Proposed Draft and Proposed Draft Revised Maximum Residue Limits including Proposed Draft MRLs for Spices.
• Proposed Draft Guidelines for the Use of Mass Spectrometry (MS) for Identification, Confirmation and Quantitative Determination of Residues.
• Proposed New Food Classification Codes for Commodities with Adopted MRLs.

To be considered at Step 5:
• Proposed Draft and Proposed Draft Revised Maximum Residue Limits including Proposed Draft MRLs for Dried Chili Peppers.
• Proposed Draft Guidelines on Estimation of Uncertainty of Results.
• Proposed Draft Risk Analysis Principles Applied by the Codex Committee on Pesticide Residues.

To be considered for Revocation:
• Codex CLX–Ds.

The committee is continuing work on:
• Pilot Project for the examination of national MRLs as Interim Codex MRLs for safer replacement pesticides.
• Revision of the List of Recommended Methods of Analysis for Pesticide Residues.
• Criteria for Prioritization Process to Recommend Compounds for Evaluation by JMPR.
• Revision of the Codex Priority List of Pesticides for review by JMPR.
• MRLs for Processed or Ready-to-Eat Foods.

*Acceptable Daily Intake (ADI) of a chemical is the daily intake which, during an entire lifetime, appears to be without appreciable risk to the health of the consumer on the basis of all the known facts at the time of the evaluation of the chemical by the Joint FAO/WHO Meeting on Pesticide Residues. It is expressed in milligrams of the chemical per kilogram of body weight.

Responsible Agency: EPA, USDA/AMS.
U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling:

(a) Defines the criteria appropriate to Codex Methods of Analysis and Sampling;

(b) Serves as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories;

(c) Specifies, on the basis of final recommendations submitted to it by the other bodies referred to in (b) above, Reference Methods of Analysis and Sampling appropriate to Codex Standards which are generally applicable to a number of foods;

(d) Considers, amends, if necessary, and endorses, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives do not fall within the terms of reference of this Committee;

(e) Elaborates sampling plans and procedures, as may be required;

(f) Considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and

(g) Defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The 26th Session of the Committee met in Budapest, Hungary, on April 4–8, 2005. The relevant document is ALINORM 05/28/23. The following will be considered by the Commission at its 28th Session in July 2005.

To be considered at Step 5:
• Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis.

The Committee will continue work on:
• Criteria for Evaluating Acceptable Methods of Analysis.

• Proposed Draft Guidelines for Settling of Disputes on Analytical (test) Results.

• Consideration of the Fitness-For-Purpose Approach to Evaluating Methods of Analysis.

• Further Review of the *Analytical Terminology for Codex Use* in the Procedural Manual.

• Endorsement of Methods of Analysis and Sampling Provisions in Codex Standards.

• Criteria for Methods of Analysis for the Detection and Identification of Foods derived from Biotechnology

• Methods of Analysis for the determination of dioxins and PCBs.

Responsible Agency: HHS/FDA; USDA/MRP.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Inspection and Certification Systems

The Codex Committee on Food Import and Export Inspection and Certification Systems is charged with developing principles and guidelines for food import and export inspection and certification systems to protect consumers and to facilitate trade. Additionally, the Committee develops principles and guidelines for the application of measures by competent authorities to provide assurance that foods comply with essential requirements, especially statutory health requirements. This encompasses work on: Equivalence of food inspection systems including equivalence agreements, processes and procedures to ensure that sanitary measures are implemented; guidelines on food import control systems; and guidelines on food product certification and information exchange. The development of guidelines for the appropriate utilization of quality assurance systems to ensure that foodstuffs conform to requirements and to facilitate trade also are included in the Committee's terms of reference. The reference document is ALINORM 05/28/30. The committee met in Melbourne, Australia, on December 6–10, 2004. The following will be considered for adoption by the Commission at its 28thSession in July 2005.

To be considered at step 5/8:

• Draft Principles for Electronic Certification.

The committee is continuing work on:

• Proposed Draft Appendices to the *Guidelines on the Judgment of Equivalence of Sanitary Measures Associated with Food Inspection and Certification*.

(a) Determining an ''objective basis of comparison''

(b) Details on the process of determining equivalence.

(c) Documentation for evaluation of submissions of requests for equivalence determinations.

• Proposed Draft Guidelines for Risk-based Inspection of Imported Foods.

New work:

• Develop principles for product tracing/traceability within the context of food inspection and certification systems.

• Revise the Codex *Guidelines for Generic Official Certificate Formats and the Production and Issuance of Certification*.

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on General Principles

The Codex Committee on General Principles deals with procedure and general matters as are referred to it by the Codex Alimentarius Commission. The 21st Session addressed issues related to decisions made by the Commission regarding the FAO/WHO Codex Evaluation. The 22nd Session which met on April 11–15, 2005 in Paris, France, considered the regular work of the Committee. The relevant documents are ALINORM 05/28/33 and ALINORM 05/28/33A. Matters to be considered for adoption by the 28th Commission in July 2005:

To be considered at Step 8:

• Draft Risk Analysis Principles Applied by the Committee on Food Additives and Contaminants (CCFAC).

• Draft CCFAC Policy for Exposure Assessment.

For consideration by the Commission:

Amendments to the Rules of Procedure:

• Proposed amendments concerning the enlargement of the Executive Committee, the functions of the Executive Committee and matters related to budget and expenses.

• Proposed Amendments to Rule VIII.5—Observers.

• Proposed Amendment on the Right to Address the Chair.

Amendments to the Procedure Manual:

• Draft Revised Criteria for the Establishment of Work Priorities.

• Draft Guidelines on Physical Working Groups.

• Draft Guidelines on Electronic Working Groups.

• Draft Revised Principles concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission.

• Proposed Amendments to the Procedural Manual to eliminate the acceptance procedures for Codex Standards.

• Draft Guidelines for Cooperation with International Intergovernmental Organizations.

The Committee continued work on:

• Proposed Draft Working Principles for Risk Analysis for Food Safety (Guidance to National Governments).

• Proposed amendments to the Rules of Procedure: Duration of the terms of the Members of the Executive Committee.

• Possible reorganization of the structure, content and presentation of the Procedural Manual.

• Changes in the Elaboration Procedures.

• Clarification of the term ''interim'' as used for the adoption of Codex standards at Step 8.

• Possible definitions of ''science-based'' and ''risk-based''.

• Management of the work in the Codex Committee on Food Hygiene.

Responsible Agency: USDA/FSIS, FDA/CFSAN.

U.S. Participation: Yes.

Codex Committee on Food Labelling

The Codex Committee on Food Labelling is responsible for drafting provisions on labelling issues assigned by the Codex Alimentarius Commission. The reference document is ALINORM 04/27/22. The Committee held its Thirty-third Session in Kota Kinabalu, Malaysia, on May 9–13, 2005. It considered the following items:

• Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods Proposed Revised Sections: Annex 2—Tables 3 and 4, Revision to Table 1 (Natural Sodium Nitrate).

• Draft Amendment to the *General Standard for the Labelling of Prepackaged Foods*—(Draft Recommendations for the Labelling of Foods Obtained through Certain Techniques of Genetic Modification/ Genetic Engineering) Section 2. (Definitions).

• Proposed Draft Guidelines for the Labelling of Food and food Ingredients obtained through certain Techniques of Genetic Modification/Genetic Engineering: Labelling Provisions.

• Proposed Draft Amendment to the *General Standard for the Labelling of Prepackaged Foods:* Quantitative Declaration of Ingredients.

• Country of Origin Labelling.

• Discussion paper on Advertising.

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene has four primary responsibilities. First, to draft basic provisions on food hygiene applicable to all food. These provisions normally take the form of Codes of Hygienic Practice for a specific commodity (*e.g.* bottled water) or group of commodities (*e.g.*, milk and milk products). Second, to suggest and prioritize areas where there is a need for microbiological risk assessment at the international level and to consider microbiological risk management matters in relation to food hygiene and in relation to the risk assessment activities of FAO and WHO. Third, to consider, amend if necessary, and endorse food hygiene provisions that are incorporated into specific Codex commodity standards by the Codex commodity committees. Fourth, to provide such other general guidance to the Commission on matters relating to food hygiene as may be necessary. The following items will be considered by the Codex Alimentarius Commission at its 28th Session in Rome, Italy, July 4–9, 2005. The relevant document is ALINORM 05/28/13.

To be considered at Step 5:

- Proposed Draft Guidelines on the Application of the General Principles of Food Hygiene to the Control of *Listeria monocytogenes* in Ready-to-Eat Foods.
- Proposed Draft Code of Hygienic Practice for Eggs and Egg Products.
- Proposed Draft Principles and Guidelines for the Conduct of Microbiological Risk Management.

The committee continues to work on:

- Proposed Draft Guidelines for Validation of Food Hygienic Control Measures.
- Proposed Draft Code of Hygienic Practice for Powdered Formulae for Infants and Children.
- Endorsement of Hygiene Provisions in Codex Standards and Codes of Practice.
- Annexes to the step 5 documents.
- Proposals/risk profiles:
- Guidelines for the Application of the General Principles of Food Hygiene to the Risk-Based Control of Enterohemorrhagic *E. coli* in Ground Beef and Fermented Sausages.
- Guidelines for the Application of the General Principles of Food Hygiene to the Risk-Based Control of Salmonella spp. in Broiler Chickens.
- Guidelines for Risk Management Options for *Campylobacter* in Broiler Chickens.
- *Vibrio* spp. in Seafood.
- Viruses in Food.

Responsible Agency: HHS/FDA; FSIS/USDA.

U.S. Participation: Yes.

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating world-wide standards and codes of practice for fresh fruits and vegetables. The Committee met in Mexico City, Mexico, on May 16–20, 2005. At the session they discussed the following items:

- Draft Standard for Tomatoes at Step 7.
- Draft Standard for Table Grapes retained at Step 7.
- Proposed Draft Standard for Rambutan at Step 3.
- Proposed Draft Standard for Apples at Step 3.
- Section 2.1.1 (Maturity Requirements) and Annex on Small-berry Varieties (Section 3.1) (draft Codex Standard for Table Grapes).
- Guidelines for the Quality Control of Fresh Fruits and Vegetables.
- Standard Layout for Codex Standards for Fresh Fruits and Vegetables.
- Priority List.

Responsible Agency: USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) is responsible for studying nutritional problems referred by the Codex Alimentarius Commission. The Committee also drafts general provisions, as appropriate, on nutritional aspects of all foods and develops standards, guidelines, or related texts for foods for special dietary uses. The committee met in Bonn, Germany, November 1–4, 2004. The relevant document is ALINORM 05/28/26. The following items will be considered by the 28th Session of the Commission in June 2005.

To be adopted at Step 8:

- Draft Guidelines for Vitamin and Mineral Food Supplements.

The Committee continues work on:

- Draft Revised Standard for Gluten-Free Foods at Step 7.
- Draft Revised Standard for Processed Cereal-Based.Foods for Infants and Young Children at Step 6.
- Draft Revised Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants at Steps 3 (Section A) and 6 (Section B).
- Guidelines for Use of Nutrition Claims Draft Table of Conditions for Nutrient Content Claims (Part B containing Provisions on Dietary Fibre) at Step 6.
- Proposed Draft Revision of the Advisory Lists of Nutrient Compounds for Use in Foods for Special Dietary Uses Intended for Use by Infants and Young Children.
- Proposed Draft Recommendations on the Scientific Basis of Health Claims.
- Discussion Paper on the Application of Risk Analysis to the Work of the CCNFSDU.
- Discussion Paper on Proposals for Additional or Revised Nutrient Reference Values (NRVs).

Responsible Agency: HHS/FDA; FNS/USDA.

U.S. Participation: Yes.

Codex Committee on Fish and Fishery Products

The Fish and Fishery Products Committee is responsible for elaborating standards for fresh, frozen and otherwise processed fish, crustaceans and mollusks. The committee met in Capetown, South Africa, February 28–March 4, 2005. The following will be considered by the 28th Session of the Commission when it meets in July 2005. The relevant document is ALINORM 05/28/18.

To be considered at Step 8:

- Draft Code of Practice for Fish and Fishery Products (Aquaculture).
- Draft Amendment to the Standard for Salted Fish and Dried Salted Fish.

To be considered at Step 5/8:

- Proposed Draft Code of Practice for Fish and Fishery Products (Shrimps and Prawns; Cephalopods; Transport; Retail; and relevant Definitions).

To be considered at Step 5:

- Proposed Draft Standard for Sturgeon Caviar New work:
- Revision of the Procedure for the Inclusion of Species.
- Amendment of the Standard for Canned Sardines and Sardine-Type Products.

The Committee continues work on the following:

- Proposed Draft Standard for Live and Processed Bivalve Mollusks.
- Proposed Draft Standard for Smoked Fish.
- Proposed Draft Standard for Quick Frozen Scallop Adductor Muscle Meat.
- Proposed Draft Code of Practice on the Processing of Scallop Meat.
- Proposed Draft Code of Practice for Fish and Fishery Products (other sections).
- Proposed Draft Amendment of the Standard for Canned Sardines and Sardine-Type Products (Clupea bentincki).

Responsible Agency: HHS/FDA; USDC/NOAA/NMFS.

U.S. Participation: Yes.

Codex Committee on Milk and Milk Products

The Codex Committee on Milk and Milk Products is responsible for establishing international codes and standards for milk and milk products. The Committee held its 6th Session in Auckland, NZ on April 26–30, 2004. The relevant document is ALINORM 04/27/11.

For discussion at the 28th Session of the Codex Alimentarius Commission in July 2005.

• Proposal for a new standard for Parmesan Cheese At its 7th Session, the Committee will continue work on the following:

At Step 6:

• Draft Standard for a Blend of Evaporated Skimmed Milk and Vegetable Fat.

• Draft Standard for a Blend of Skimmed Milk and Vegetable Fat in Powdered Form.

• Draft Standard for a Blend of Sweetened Condensed Skimmed Milk and Vegetable Fat.

• Draft Revised Standard for Whey Cheese.

• Draft Revised Standards for Cheddar (C–1) and Danbo (C–3).

Other work of the committee:

• Proposed Draft Revised Standards for Individual Cheeses at Step 4.

• Proposed Template for Fermented Milk Drinks Provisions.

• Proposed Draft Model Export Certificate for Milk and Milk Products.

• Methods of Analysis and Sampling for Milk Products.

• Proposed Draft Revised Standard for Processed Cheese.

• Proposed Draft Revised Standard for Dairy Spreads.

• Discussion paper on Proposed Revision of the Codex Standard for Extra Hard Grating Cheese.

• Discussion paper on the Issue of Naming Non-standardized Dairy Products.

Responsible Agency: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils is responsible for elaborating standards for fats and oils of animal, vegetable, and marine origin. The committee met in London, U.K., February 21–25, 2005. The relevant document is 05/28/17. The following will be considered by the Commission at its July 2005 session.

To be considered at Step 5/8:

• Proposed Draft Amendments to the Standard for Named Vegetable Oils: Sesameseed Oil.

To be considered at Step 5:

• Proposed Draft Amendments to the Standard for Named Vegetable Oils: Rice Bran Oil.

To be considered at Step 5 of the Accelerated Procedure:

• Proposed Draft Revised Table 1 of the Recommended International Code of Practice for the Storage and Transport of Edible Fats and Oils in Bulk.

New Work:

• Amendment of the Standard for Named Vegetable Oils.

• Mid-oleic sunflowerseed oil.

• Mid-oleic acid soya bean oil.

• Low linolenic acid soya bean oil.

• Unbleached palm oil: total carotenoids.

The Committee continues work on:

• Draft Standard for Fat Spreads and Blended Spreads: Food additives.

• Draft List and Proposed Draft List of Acceptable Previous Cargoes.

• Proposed Draft Amendment to the Standard for Olive Oil: Linolenic Acid content.

• Criteria for the Revision of Named Vegetable oils.

• Consideration of ISO proposal to amend the nomenclature of oils.

Responsible Agency: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables is responsible for elaborating standards for Processed Fruits and Vegetables. After having been adjourned *sine die,* the Committee reconvened in Washington, DC, in March 1998 to begin work revising the standards. The Committee held its most recent session on September 27 October 1, 2004. The relevant document is ALINORM 05/28/27.

To be considered at Step 5:

• Processed Tomato Concentrates.

• Preserved (Canned) Tomatoes.

• Certain Canned Citrus Fruits.

The committee is continuing work on:

• Draft Codex Standard for Pickled Fruits and Vegetables.

• Proposed Draft Codex Standards for:

• Jams, Jellies and Marmalades.

• Certain Canned Vegetables and Guidelines for Packing Media for Canned Vegetables.

Other work:

• Methods of Analysis for Processed Fruits and Vegetables.

• Priority List for the Standardization of Processed Fruits and Vegetables.

Discontinued work in this committee:

• Proposed Draft Standard for Soy Sauce.

Responsible Agency: USDA/AMS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Meat Hygiene

The 24th Session of the Commission decided to reactivate the Codex Committee on Meat Hygiene with New Zealand as Host Government. The Terms of Reference were amended to reflect the inclusion of poultry in its mandate. The Committee completed its work at its 11th Session and requested the Commission that it be adjourned *sine die.* The relevant document is ALINORM 05/28/16.

To be considered at Step 8:

• Draft Code of Hygienic Practice for Meat.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Cereals, Pulses, and Legumes

The 26th Session of the Codex Alimentarius Commission adopted the Proposed Draft Standard for Instant Noodles at Step 5, on the recommendation of the Coordinating Committee for Asia, and advanced it to Step 6 for consideration by the Committee on Cereals, Pulses and Legumes by correspondence. The United States, as host government, has circulated the Draft Standard for two rounds of comments. Consideration of the additives provisions will take place in the Codex Committee on Food Additives and Contaminants.

Responsible Agency: HHS/FDA; USDA/GIPSA.

U.S. Participation: Yes.

Certain Codex Commodity Committees

Several Codex Alimentarius Commodity Committees have adjourned *sine die.* The following Committees fall into this category:

• *Cocoa Products and Chocolate.*

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

• *Natural Mineral Water.*

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

• *Sugars.*

Responsible Agency: USDA/ARS; HHS/FDA.

U.S. Participation: Yes.

• *Vegetable Proteins.*

Responsible Agency: USDA/ARS; HHS/FDA.

U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Animal Feeding

The Commission at its 23rd Session established the Ad Hoc Intergovernmental Task Force on Animal Feeding to develop guidelines or standards as appropriate on good animal feeding practices. The Revised

Draft Code of Practice for Good Animal Feeding was held at Step 8 by the Commission at its 26th Session in June 2003, with the exception that the definition of ''feed additive'' and paragraphs 11, 12, and 13 were advanced to step 6. The Task Force held its 5th Session on May 17–19, 2004 and discussed:

• Revised Draft Code of Practice for Good Animal Feeding (definition of ''feed additive'' and paragraphs 11, 12, and 13).

Responsible Agency: HHS/FDA; USDA/APHIS.

U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

The Commission at its 23rd Session established this Task Force to revise and consolidate the existing Codex standards and guidelines for fruit and vegetable juices and related products, giving preference to general standards. These standards were originally developed by the Joint UNECE/Codex Group of Experts on the Standardization of Fruit Juices which had been abolished by its parent organizations. The Task Force held its fourth and final session in Fortaleza, Brazil, on October 11–15, 2004. The Task Force completed the work assigned to the Task Force in its Terms of Reference.

For Adoption at Step 8:

• Draft Codex General Standard for Fruit Juices and Nectars.

• Draft Minimum Brix Level for Reconstituted Juice and Reconstituted Pure and Minimum Juice and/or Pure Content for Fruit Nectars (%v/v)—grapes, guava, mandarine/tangerine, mango, passion fruit and tamarind (Indian date) juices/nectars.

For Adoption at Step 5/8:

• Proposed Draft Minimum Brix Level for Reconstituted Juice and Reconstituted Pure and Minimum Juice and/or Purée Content for Fruit nectars (%v/v)—orange, lemon, lime, and pineapple juices/nectars.

Responsible Agency: HHS/FDA; USDA/AMS.

U.S. Participation: Yes.

FAO/WHO Regional Coordinating Committees

The Codex Alimentarius Commission is made up of an Executive Committee, as well as approximately 30 subsidiary bodies. Included in these subsidiary bodies are coordinating committees for groups of countries located in proximity to each other who share common concerns. There are currently six Regional Coordinating Committees:

• Coordinating Committee for Africa.

• Coordinating Committee for Asia.

• Coordinating Committee for Europe.

• Coordinating Committee for Latin America and the Caribbean.

• Coordinating Committee for the Near East.

• Coordinating Committee for North America and the South-West Pacific.

The United States participates as an active member of the Coordinating Committee for North America and the South-West Pacific, and is informed of the other coordinating committees through meeting documents, final reports, and representation at meetings. Each regional committee:

• Defines the problems and needs of the region concerning food standards and food control;

• Promotes within the committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulates the strengthening of food control infrastructures;

• Recommends to the Commission the development of world-wide standards for products of interest to the region, including products considered by the committee to have an international market potential in the future; and

• Serves a general coordinating role for the region and performs such other functions as may be entrusted to it by the Commission.

Codex Coordinating Committee for North America and the South-West Pacific

The Coordinating Committee is responsible for defining problems and needs concerning food standards and food control of all Codex member countries of the region. Items coming before the Commission in July include the following. The committee met in Apia, Samoa, on October 19–22, 2004. The relevant document is ALINORM 05/28/32.

• Recommendation that Samoa be reappointed as Regional Coordinator.

• Support the development of a new Standard for Parmesan cheese and adopt the amendment of the Codex Standard for Canned Sardines and Sardine-Type Products.

Items on the agenda for the next meeting may include:

• Codex working documents of special interest to regional member states.

• Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards.

• Strategic Plan for the Coordinating Committee for North America and the Southwest Pacific.

• Trust Fund for the participation of Developing Countries in Codex.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Coordinating Committee for Asia

The Coordinating Committee met in Jeju-Do, Republic of Korea on September 7–10, 2004. The relevant document is ALINORM—5/15.

To be considered at Step 5:

• Proposed Draft Standard for Ginseng Products.

New work:

• Refrigerated, Non-fermented Soybean Products.

Attachment 2—U.S. Codex Alimentarius Officials Codex Committee Chairpersons

Codex Committee on Food Hygiene

Dr. Karen Hulebak, Chief Scientist, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 3130, South Building, Washington, DC 20250–3700, Phone: (202) 720–5735, Fax: (202) 720–2980. E-mail: *karen.hulebak@fsis.usda.gov*.

Codex Committee on Processed Fruits and Vegetables

Mr. David L. Priester, Head, Standardization Section, AMS Fruit & Vegetable Programs, Fresh Products Branch, U.S. Department of Agriculture, Room 1661, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–0240. Phone: (202) 720–2185. Fax: (202) 720–8871. E-mail: *david.priester@usda.gov*.

Codex Committee on Residues of Veterinary Drugs in Foods

Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–1), Rockville, MD 20855, Phone: (301) 827–2950, Fax: (301) 827–8401, E-mail: *ssundlof@cvm.fda.gov*.

Codex Committee on Cereals, Pulses and Legumes (Adjourned sine die)

Mr. Steven N. Tanner, Director, Technical Services Division, Grain Inspection, Packers & Stockyards Administration, U.S. Department of Agriculture, 10383 N. Executive Hills Boulevard, Kansas City, MO 64153–1394, Phone: (816) 891–0401, Fax: (816) 891–0478, E-mail: *stanner@tsd.fgiskc.usda.gov*.

Listing of U.S. Delegates and Alternates Worldwide General Subject Codex Committees

Codex Committee on Residues of Veterinary Drugs in Foods (Host Government—United States)

U.S. Delegate

Dr. Steven D. Vaughn, Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, Phone: (301) 827–1796, Fax: (301) 594–2297, E-mail: *SVaughn@cvm.fda.gov*.

Alternate Delegate

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Codex Committee on Food Additives and Contaminants (Host Government—The Netherlands)

U.S. Delegate

Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1700, Fax: (301) 436–2632, E-mail: *Terry.Troxell@cfsan.fda.gov*.

Alternate Delegate

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Codex Committee on Pesticide Residues (Host Government—The Netherlands)

U.S. Delegate

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Alternate Delegate

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Codex Committee on Methods of Analysis and Sampling (Host Government—Hungary)

U.S. Delegate

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Alternate Delegate

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Codex Committee on Food Import and Export Inspection and Certification Systems (Host Government—Australia)

U.S. Delegate

Dr. Catherine Carnevale, Director, Office of Constituent Operations, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–550), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–2380, Fax: (301) 436–2612, E-mail: *Catherine.Carnevale@cfsan.fda.gov*.

Alternate Delegate

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Codex Committee on General Principles (Host Government—France)

U.S.Delegate

Note: A member of the Steering Committee heads the delegation to meetings of the General Principles Committee.

Codex Committee on Food Labeling (Host Government—Canada)

U.S. Delegate

Leslye Fraser, J.D., Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Parkway (HFS–004), College Park, MD 20740, Phone: (301) 436–2378, Fax: (301) 436–2637, E-mail: *leslye.fraser@fda.hhs.gov*.

Alternate Delegate

Ms. Danielle Schor, Chief of Staff, Office of the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1400, Phone: (202) 720–6618, Fax: (202) 720–7771, E-mail: *danielle.schor@fsis.usda.gov*.

Codex Committee on Food Hygiene (Host Government—United States)

U.S. Delegate

Dr. Robert L. Buchanan, Director, Office of Science, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–006), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–2369, Fax: (301) 436–2642, E-mail: *Robert.Buchanan@cfsan.fda.gov*.

Alternate Delegates

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Dr. Rebecca Buckner, Consumer Safety Officer, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Room 3B–0033 Harvey Wiley Building, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: (301) 436–1486, Fax: (301) 436–2632, E-mail: *Rebecca.Buckner@cfsan.fda.gov*.

Codex Committee on Nutrition and Food for Special Dietary Uses (Host Government—Germany) U.S. Delegate

Barbara O. Schneeman, PhD, Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Highway, College Park, MD 20740, Tel: (301) 436–2373, Fax: (301) 436–2636, E-mail: *Barbara.Schneeman@cfsan.fda.gov*.

Alternate Delegate

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Worldwide Commodity Codex Committees Codex Committee on Fresh Fruits and Vegetables (Host Government—Mexico)

U.S. Delegate

Dorian LaFond, International Standards Coordinator, Fruit and Vegetables Program, Agricultural Marketing Service, Room 2086, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone (202) 690–4944, Fax: (202) 720–4722, E-mail: *dorian.lafond@usda.gov*.

Alternate Delegate

Vacant.

Codex Committee on Fish and Fishery Products (Host Government—Norway)

U.S. Delegate

Mr. Philip C. Spiller, Director, Office of Seafood, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–400), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–2300, Fax: (301) 436–2599, E-mail: *Philip.Spiller@cfsan.fda.gov*.

Alternate Delegate

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Codex Committee on Cereals, Pulses and Legumes (Host Government—United States)

U.S. Delegate

Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–585), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1714, Fax: (301) 436–2612, E-mail: *Charles.Cooper@cfsan.fda.gov*.

Alternate Delegate

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Codex Committee on Milk and Milk Products (Host Government—New Zealand)

U.S. Delegate

Mr. Duane Spomer, Associate Deputy Administrator for Standards and Grading, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 720–3171, Fax: (202) 720–2643, E-mail: *duane.spomer@usda.gov*.

Alternate Delegate

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Codex Committee on Fats and Oils (Host Government—United Kingdom)

U.S. Delegate

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Codex Committee on Cocoa Products and Chocolate (Host Government—Switzerland)

U.S. Delegate

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Codex Committee on Sugars (Host Government—United Kingdom)

U.S. Delegate

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Codex Committee on Processed Fruits and Vegetables (Host Government—United States)

U.S. Delegate

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Codex Committee on Vegetable Proteins (Host Government—Canada)

U.S. Delegate

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Alternate Delegate

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Codex Committee on Meat Hygiene (Host Government—New Zealand)

U.S. Delegate

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Alternate Delegate

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Codex Committee on Natural Mineral Waters (Host Government—Switzerland)

U.S. Delegate

Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety & Applied Nutrition, Food and Drug Administration (HFS–300), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1700, Fax: (301) 436–2632, E-mail: *Terry.troxell@cfsan.fda.gov.*

Alternate Delegate

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Ad Hoc Intergovernmental Task Forces; Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices (Host Government—Brazil)

U.S. Delegate

Mr. Martin Stutsman, Office of Plant and Dairy Foods, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–306), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1642, Fax: (301) 436–2651, E-mail: *Martin.Stutsman@cfsan.fda.gov.*

Alternate Delegate

Vacant.

Ad Hoc Intergovernmental Task Force on Foods Derived From Modern Biotechnology (Host Government—Japan)

U.S. Delegate

Bernice Slutsky, Ph.D., Special Assistant to the Secretary for Biotechnology, Office of the Secretary, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 720–3631, Fax: (202) 720–6314, E-mail: *Bernice.Slutsky@usda.gov.*

Alternate Delegate

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There are six regional coordinating committees:

Coordinating Committee for Africa
Coordinating Committee for Asia
Coordinating Committee for Europe
Coordinating Committee for Latin America and the Caribbean
Coordinating Committee for the Near East
Coordinating Committee for North America and the South-West Pacific

Contact: Paulo Almeida, Office Manager, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, Phone (202) 205–7760, Fax (202) 720–3157, E-mail: *Paulo.Almeida@fsis.usda.gov.*

ATTACHMENT 3.—TIMETABLE OF CODEX SESSIONS

[June 2004 through June 2006]

2004:			
CX 702–54	Executive Committee (54th session)	24–26 June	Geneva (Switzerland).
CX 701–27	Codex Alimentarius Commission (27th Session)	28 June–2 July	Geneva (Switzerland).
CX 727–14	Regional Coordinating Committee for Asia (14th Session).	7–10 September	JeJu (City) Republic of Korea.
CX 706–24	Regional Coordinating Committee for Europe (24th Session).	20–23 September	Bratislava (Slovak Republic).
CX 713–22	Codex Committee on Processed Fruits and Vegetables (22nd Session).	27 September–1 October	Arlington, VA (USA).
CX 801–03	Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices (3rd Session).	11–15 October	Fortaleza (Brazil).
CX 732–08	Regional Coordinating Committee for North America and South West Pacific (8th Session).	19–22 October	Apia (Samoa).
CX 730–15	Codex Committee on Residue of Veterinary Drugs in Foods (15th Session).	25–28 October	Arlington, VA (USA).
CX 720–26	Codex Committee on Nutrition and Foods for Special Dietary Uses (26th Session).	1–5 November	Bonn (Germany).
CX 716–21	Codex Committee on General Principles (21st Session).	15–19 November	Paris (France).
CX 725–14	Regional Coordinating Committee for Latin America and the Caribbean (14th Session).	29 November–3 December	Buenos Aires (Argentina).
CX 733–13	Codex Committee on Food Import and Export Certification Systems (13th Session).	6–10 December	Melbourne (Australia).

ATTACHMENT 3.—TIMETABLE OF CODEX SESSIONS—Continued

[June 2004 through June 2006]

2005:			
CX 707–16	Regional Coordinating Committee for Africa (16th Session).	25–28 January	Rome (FAO) (Italy).
CX 702–55	Executive Committee (55th Session)	9–11 February	Rome (FAO) (Italy).
CX 723–11	Codex Committee on Meat and Poultry Hygiene (11th Session).	14–18 February	Christchurch (New Zealand).
CX 709–19	Codex Committee on Fats and Oils (19th Session)	21–25 February	London (United Kingdom).
CX 722–27	Codex Committee on Fish and Fishery Products (27th Session).	28 February–4 March	Capetown (South Africa).
CX 734–03	Regional Coordinating Committee for Near East (3rd Session).	7–10 March	Amman (Jordan).
CX 712–37	Codex Committee on Food Hygiene (37th Session)	14–19 April	Buenos Aires (Argentina).
CX 715–26	Codex Committee on Methods of Analysis and Sampling (26th Session).	4–8 April	Budapest (Hungary).
CX 716–22	Codex Committee on General Principles (22nd Session).	11–15 April	Paris (France).
CX 718–37	Codex Committee on Pesticide Residues (37th Session).	18–23 April	The Hague (The Netherlands).
CX 711–37	Codex Committee on Food Additives and Contaminants (37th Session).	25–29 April	The Hague (The Netherlands).
CX 714–33	Codex Committee on Food Labelling (33rd Session)	9–13 May	Kota Kinabalu (Malaysia).
CX 731–12	Codex Committee on Fresh Fruits and Vegetables (12th Session).	16–20 May	Mexico City Mexico).
CX 702–56	Executive Committee (56th Session)	6 June–2 July	Rome (Italy).
CX 701–28	Codex Alimentarius Commission (28th Session)	4–9 July	Rome (Italy).
CX 804–1	Ad Hoc Task Force on Biotechnology	19–23 September	TBA (Japan).
CX 720–14	Codex Committee on Nutrition and Foods for Special Dietary Uses (27th Session).	21–25 November	Bonn (Germany).
CX 733–14	Codex Committee on Food Import and Export Inspection and Certification Systems (14th Session).	28 November–2 December	TBA (Australia).
CX 702–57	Executive Committee (57th Session)	30 November–2 December	Geneva (Switzerland).
2006:			
CX 703–7	Codex Committee on Milk and Milk Products (7th Session).	27–31 March	TBA (New Zealand).
CX 718–38	Codex Committee on Pesticide Residues (38th Session).	3–8 April	TBA (Brazil).
CX 716–23	Codex Committee on General Principles (23rd Session).	9–13 April	Paris (France).
CX 711–38	Codex Committee on Food Additives and Contaminants (38th Session).	24–28 April	The Hague (The Netherlands).
CX 714–34	Codex Committee on Food Labelling (34th Session)	1–5 May	Ottawa (Canada).
CX 730–16	Codex Committee on Residue of Veterinary Drugs in Food (16th Session).	8–12 May	Washington, DC (USA).
CX 715–27	Codex Committee on Methods of Analysis and Sampling (27th Session).	15–19 May	Budapest (Hungary).
CX 702–58	Executive Committee (58th Session)	28–30 June	Geneva (Switzerland).
CX 201–29	Codex Alimentarius Commission (29th Session)	3–8 July	Geneva (Switzerland).

Attachment 4—Definitions for the Purpose of Codex Alimentarius

Words and phrases have specific meanings when used by the Codex Alimentarius.

For the purposes of Codex, the following definitions apply:

1. *Food* means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum, and any substance which has been used in the manufacture, preparation or treatment of ''food'' but does not include cosmetics or tobacco or substances used only as drugs.

2. *Food hygiene* comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption.

3. *Food additive* means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The food additive term does not include ''contaminants'' or substances added to food for maintaining or improving nutritional qualities.

4. *Contaminant* means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry, and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matters.

5. *Pesticide* means any substance intended for preventing, destroying, attracting, repelling, or controlling any pest including unwanted species of plants or animals during the production,

storage, transport, distribution and processing of food, agricultural commodities, or animal feeds or which may be administered to animals for the control of ectoparasites. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, fruit thinning agent, or sprouting inhibitor and substances applied to crops either before of after harvest to protect the commodity from deterioration during storage and transport. The term pesticides excludes fertilizers, plant and animal nutrients, food additives, and animal drugs.

6. *Pesticide residue* means any specified substance in food, agricultural commodities, or animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxological significance.

7. *Good Agricultural Practice in the Use of Pesticides (GAP)* includes the nationally authorized safe uses of pesticides under actual conditions necessary for effective and reliable pest control. It encompasses a range of levels of pesticide applications up to the highest authorized use, applied in a manner that leaves a residue, which is the smallest amount practicable.

Authorized safe uses are determined at the national level and include nationally registered or recommended uses, which take into account public and occupational health and environmental safety considerations.

Actual conditions include any stage in the production, storage, transport, distribution and processing of food commodities and animal feed.

8. *Codex Maximum Limit for Pesticide Residues (MRLP)* is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. MRLPs are based on their toxological affects and on GAP data and foods derived from commodities that comply with the respective MRLPs are intended to be toxologically acceptable.

Codex MRLPs, which are primarily intended to apply in international trade, are derived from reviews conducted by the JMPR following:

(a) Toxological assessment of the pesticide and its residue, and

(b) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices. Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

Consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI, should indicate that foods complying with Codex MRLPs are safe for human consumption.

9. *Veterinary Drug* means any substance applied or administered to any food-producing animal, such as meat or milk-producing animals, poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

10. *Residues of Veterinary Drugs* include the parent compounds and/or their metabolites in any edible portion of the animal product, and include residues of associated impurities of the veterinary drug concerned.

11. *Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD)* is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or μg/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on food.

An MRLVD is based on the type and amount of residue considered to be without any toxological hazard for human health as expressed by the Acceptable Daily Intake (ADI), or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical and analytical methods are available.

12. *Good Practice in the Use of Veterinary Drugs* (GPVD) is the official recommended or authorized usage including withdrawal periods approved by national authorities, of veterinary drugs under practicable conditions.

13. *Processing Aid* means any substance or material, not including apparatus or utensils, not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.

Definitions of Risk Analysis Terms Related to Food Safety Hazard: A biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

Hazard Identification: The identification of biological, chemical, and physical agents capable of causing adverse health effects and which may be present in a particular food or group of foods.

Hazard Characterization: The qualitative and/or quantitative evaluation of the nature of the adverse health effects associated with biological, chemical and physical agents that may be present in food. For chemical agents, a dose-response assessment should be performed. For biological or physical agents, a dose-response assessment should be performed if the data are obtainable.

Dose-Response Assessment: The determination of the relationship between the magnitude of exposure (dose) to a chemical, biological or physical agent and the severity and/or frequency of associated adverse health effects (response).

Exposure Assessment: The qualitative and/or quantitative evaluation of the likely intake of biological, chemical, and physical agents via food as well as exposures from other sources if relevant.

Risk: A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food.

Risk Analysis: A process consisting of three components: Risk assessment, risk management and risk communication.

Risk Assessment: A scientifically based process consisting of the following steps: (i) Hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization.

Risk Assessment Policy: Documented guidelines on the choice of options and associated judgments for their application at appropriate decision points in the risk assessment such that the scientific integrity of the process is maintained.

Risk Characterization: The qualitative and/or quantitative estimation, including attendant uncertainties, of the probability of occurrence and severity of known or potential adverse health effects in a given population based on hazard identification, hazard

characterization and exposure assessment.

Risk Communication: The interactive exchange of information and opinions throughout the risk analysis process concerning risk, related risk factors and risk perceptions, among risk assessors, risk managers, consumers, industry, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions.

Risk Estimate: The quantitative estimation of risk resulting from risk characterization.

Risk Management: The process, distinct from risk assessment, of weighing policy alternatives, in consultation with all interested parties, considering risk assessment and other factors relevant for the health protection of consumers and for the promotion of fair trade practices, and, if needed, selecting appropriate prevention and control options.

Risk Profile: The description of the food safety problem and its context.

Food Safety Objective (FSO): The maximum frequency and/or concentration of a hazard in a food at the time of consumption that provides or contributes to the appropriate level of protection (ALOP).

Performance Criterion (PC): The effect in frequency and/or concentration of a hazard in a food that must be achieved by the application of one or more control measures to provide or contribute to a PO or an FSO.

Performance Objective (PO): The maximum frequency and/or concentration of a hazard in a food at a specified step in the food chain before the time of consumption that provides or contributes to an FSO or ALOP, as applicable.

Attachment 5

Part 1—Uniform Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission decides, taking into account the ''Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies,'' to elaborate a Worldwide Codex Standard and also decides which subsidiary body or other body should undertake the work. A decision to elaborate a Worldwide Codex Standard may also be taken by subsidiary bodies of the Commission in accordance with the above-mentioned criteria, subject to subsequent approval by the Commission or its Executive Committee at the earliest possible opportunity. In the case of Codex Regional Standards, the Commission shall base its decision on the proposal of the majority of members belonging to a given region or group of countries submitted at a session of the Codex Alimentarius Commission.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

The proposed draft standard is submitted through the Secretariat to the Commission or to the Executive Committee with a view to its adoption as a draft standard. When making any decision at this step, the Commission or the Executive Committee will give due consideration to any comments that may be submitted by any of its members regarding the implications which the proposed draft standard or any provisions of the standard may have for their economic interests. In the case of Regional Standards, all members of the Commission may present their comments, take part in the debate and propose amendments, but only the majority of the Members of the region or group of countries concerned attending the session can decide to amend or adopt the draft. When making any decisions at this step, the members of the region or group of countries concerned will give due consideration to any comments that may be submitted by any of the members of the Commission regarding the implications which the proposed draft standard or any provisions of the proposed draft standard may have for their economic interests.

Step 6

The draft standard is sent by the Secretariat to all members and interested international organizations for comment on all aspects, including possible implications of the draft standard for their economic interests.

Step 7

The comments received are sent by the Secretariat to the subsidiary body or other body concerned, which has the power to consider such comments and amend the draft standard.

Step 8

The draft standard is submitted through the Secretariat to the Commission together with any written proposals received from members and interested international organizations for amendments at Step 8 with a view to its adoption as a Codex Standard. In the case of Regional standards, all members and interested international organizations may present their comments, take part in the debate and propose amendments but only the majority of members of the region or group of countries concerned attending the session can decide to amend and adopt the draft.

Part 2—Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission or the Executive Committee between Commission sessions, on the basis of a two-thirds majority of votes cast, taking into account the ''Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies'', shall identify those standards which shall be the subject of an accelerated elaboration process. The identification of such standards may also be made by subsidiary bodies of the Commission, on the basis of a two-thirds majority of votes cast, subject to confirmation at the earliest opportunity by the Commission or its Executive Committee by a two-thirds majority of votes cast.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues

(JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to Members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests. When standards are subject to an accelerated procedure, this fact shall be notified to the Members of the Commission and the interested international organizations.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

In the case of standards identified as being subject to an accelerated elaboration procedure, the draft standard is submitted through the Secretariat to the Commission together with any written proposals received from Members and interested international organizations for amendments with a view to its adoption as a Codex standard. In taking any decision at this step, the Commission will give due consideration to any comments that may be submitted by any of its Members regarding the implications which the proposed draft standard or any provisions thereof may have for their economic interests.

Attachment 6—Nature of Codex Standards

Codex standards contain requirements for food aimed at ensuring for the consumer a sound, wholesome food product free from adulteration, and correctly labelled. A Codex standard for any food or foods should be drawn up in accordance with the Format for Codex Commodity Standards and contain, as appropriate, the criteria listed therein.

Format for Codex Commodity Standards Including Standards Elaborated Under the Code of Principles Concerning Milk and Milk Products

Introduction

The format is also intended for use as a guide by the subsidiary bodies of the Codex Alimentarius Commission in presenting their standards, with the object of achieving, as far as possible, a uniform presentation of commodity standards. The format also indicates the statements which should be included in standards as appropriate under the relevant headings of the standard. The sections of the format required to be completed for a standard are only those provisions that are appropriate to an international standard for the food in question.

Name of the Standard
Scope
Description
Essential Composition and Quality Factors
Food Additives
Contaminants
Hygiene
Weights and Measures
Labelling
Methods of Analysis and Sampling

Format for Codex Standards

Name of the Standard

The name of the standard should be clear and as concise as possible. It should usually be the common name by which the food covered by the standard is known or, if more than one food is dealt with in the standard, by a generic name covering them all. If a fully informative title is inordinately long, a subtitle could be added.

Scope

This section should contain a clear, concise statement as to the food or foods to which the standard is applicable unless the name of the standard clearly and concisely identifies the food or foods. A generic standard covering more than one specific product should clearly identify the specific products to which the standard applies.

Description

This section should contain a definition of the product or products with an indication, where appropriate, of the raw materials from which the product or products are derived and any necessary references to processes of manufacture. The description may also include references to types and styles of product and to type of pack. The description may also include additional definitions when these additional definitions are required to clarify the meaning of the standard.

Essential Composition and Quality Factors

This section should contain all quantitative and other requirements as to composition including, where necessary, identity characteristics, provisions on packing media and requirements as to compulsory and optional ingredients. It should also include quality factors that are essential for the designation, definition, or composition of the product concerned. Such factors could include the quality of the raw material, with the object of protecting the health of the consumer, provisions on taste, odor, color, and texture which may be apprehended by the senses, and basic quality criteria for the finished products, with the object of preventing fraud. This section may refer to tolerances for defects, such as blemishes or imperfect material, but this information should be contained in appendix to the standard or in another advisory text.

Food Additives

This section should contain the names of the additives permitted and, where appropriate, the maximum amount permitted in the food. It should be prepared in accordance with guidance given on page of the Codex Procedural Manual and may take the following form:

''The following provisions in respect of food additives and their specifications as contained in section * * * of the Codex Alimentarius are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants.''

A tabulation should then follow, viz.:

''*Name of additive, maximum level* (in percentage or mg/kg).''

Contaminants

(a) *Pesticide Residues:* This section should include, by reference, any levels for pesticide residues that have been established by the Codex Committee on Pesticide Residues for the product concerned.

(b) *Other Contaminants:* In addition, this section should contain the names of other contaminants and where appropriate the maximum level permitted in the food, and the text to appear in the standard may take the following form:

''The following provisions in respect of contaminants, other than pesticide residues, are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants.''

A tabulation should then follow, viz.:

''*Name of contaminant, maximum level* (in percentage or mg/kg).''

Hygiene

Any specific mandatory hygiene provisions considered necessary should be included in this section. They should be prepared in accordance with the guidance given in the Codex Procedural Manual. Reference should also be made to applicable codes of hygienic practice. Any parts of such codes, including in

particular any end-product specifications, should be set out in the standard, if it is considered necessary that they should be made mandatory. The following statement should also appear:

''The following provisions in respect of the food hygiene of the product are subject to endorsement [have been endorsed] by the Codex Committee on Food Hygiene.''

Weights and Measures

This section should include all provisions, other than labelling provisions, relating to weights and measures, *e.g.*, where appropriate, fill of container, weight, measure or count of units determined by an appropriate method of sampling and analysis. Weights and measures should be expressed in S.I. units. In the case of standards which include provisions for the sale of products in standardized amounts, *e.g.* multiples of 100 grams, S.I. units should be used, but this would not preclude additional statements in the standards of these standardized amounts in approximately similar amounts in other systems of weights and measures.

Labelling

This section should include all the labelling provisions contained in the standard and should be prepared in accordance with the guidance given in the Codex Procedural Manual. Provisions should be included by reference to the General Standard for the Labelling of Prepackaged Foods. The section may also contain provisions which are exemptions from, additions to, or which are necessary for the interpretation of the General Standard in respect of the product concerned provided that these can be justified fully. The following statement should also appear:

''The following provisions in respect of the labelling of this product are subject to endorsement [have been endorsed] by the Codex Committee on Food Labelling.''

Methods of Analysis and Sampling

This section should include, either specifically or by reference, all methods of analysis and sampling considered necessary and should be prepared in accordance with the guidance given in the Codex Procedural Manual. If two or more methods have been proved to be equivalent by the Codex Committee on Methods of Analysis and Sampling, these could be regarded as alternatives and included in this section either specifically or by reference. The following statement should also appear:

''The methods of analysis and sampling described hereunder are to be endorsed [have been endorsed] by the Codex Committee on Methods of Analysis and Sampling.''

[FR Doc. 05–10636 Filed 5–26–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Bearlodge Ranger District, Wyoming, Dean Project Area Proposal and Analysis

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement multiple resource management actions within the Dean Area as directed by the Black Hills National Forest Land and Resource Management Plan. The Dean Project Area covers about 12,468 acres of National Forest System land and about 2,256 acres of interspersed private land within the Redwater Creek watershed directly north of Sundance, Wyoming. Proposed actions would modify the structure of forest stands across the planning area to reduce fuel loads, potential for uncharacteristically intense wildfire behavior, and risk of insect outbreaks; provide for diverse wildlife habitat and restore hardwood; and provide a mix of motorized and non-motorized use opportunities. This revised Notice of Intent is being issued because of a change in the designated responsible official.

DATES: Scoping was conducting as described in the Notice of Intent of November 24, 2004 (69 FR 68303). Comments submitted during scoping for the proposed action are part of the project record and were considered in developing the Draft EIS. The Draft EIS was issued in March 2005 (70 FR 12211), and the comment period was extended once (70 FR 19951). Comments were accepted through May 2, 2005. These comments are being considered during completion of the Final EIS. The Final environmental impact statement is expected in June 2005.

FOR FURTHER INFORMATION CONTACT: Janis Bouma, Project Coordinator, Black Hills National Forest, Bearlodge Ranger District, 121 S. 21st Street, Sundance, Wyoming 82729, phone (307) 283–1361.

SUPPLEMENTARY INFORMATION: The actions are proposed in direct response to management direction provided by the Black Hills National Forest Land and Resource Management Plan (Forest Plan). The site-specific actions are based on Forest Plan Standards and Guidelines to promote existing resource conditions in the Dean Project Area toward meeting Forest Plan Goals and Objectives. The project area lies in the Bear Lodge Mountains in the Black Hills National Forest, directly north of Sundance, Wyoming. Issues considered include: Fire and fuel hazard reduction; impacts of vegetation treatment and multiple forest uses on wildlife and fish habitat; and travel management and recreation.

Purpose of and Need for Action

There is a need to reduce the potential for uncharacteristically intense wildfire behavior and insect infestation, provide diverse wildlife habitat, and manage motorized recreation in the Dean Project Area. This project will address Forest Plan Goal 2 (providing for biologically diverse ecosystems) and Goal 3 (providing for sustained commodity uses) consistent with Forest Plan Standards and Guidelines.

Proposed Action

Actions proposed in the Dean Project Area include:

- Modifying stand structure across the planning area to reduce potential for uncharacteristically intense wildfire behavior and benefit wildlife. This action includes thinning the forest, removing conifers from stands of hardwoods such as aspen, bur oak, and birch, and expanding and/or creating meadows.
- Reducing fuel loads by decreasing the volume and arrangement of both existing fuels and those resulting from other vegetation treatment activities. Treatment could include lopping, chipping, crushing, piling and burning, and prescribed burning on up to 2,971 acres.
- Reducing the density of pine stands on up to 4,840 acres to decrease the potential for spreading crown fires, increase tree growth and vigor, and lessen the risk of insect infestation and disease. This may be done by using commercial timber harvest to thin out merchantable trees and using other methods to thin small, unmerchantable trees. These actions would provide wood fiber to local industry and would require construction of up to 5.7 miles of new specified roads.
- Modifying the Forest Plan through a non-significant amendment to change Management Area (MA) designation in part of the project area to better reflect actual conditions. The entire project area is currently in MA 5.4 (Big Game

Winter Range Emphasis). The lower elevations and south aspects on the east side of the project area currently provide appropriate and important winter range for deer and elk and are utilized as such. However, the remainder of the project area is heavily used by deer and elk only during the spring, summer, and fall, including calving and fawning periods. Therefore, the Forest proposes to change the Management Area designation in a portion of the project area to MA 5.6 (Forest Products, Recreation, and Big Game Emphasis) to reflect the actual utilization and better manage the project area to benefit a variety of wildlife, including big game species, and better reflect existing non-motorized recreation opportunities. Amendments area also proposed to allow reduction of density in certain stands that provide big game thermal cover and to allow treatment of three stands in goshawk post-fledging family areas.

• Providing a mix of motorized and non-motorized opportunities and protecting wildlife in the area by closing the project area to off-road motorized travel and restricting ATV use to designated routes. Main system routes currently open to motorized travel would remain open. Approximately 23.5 miles of roads would also be decommissioned.

Alternatives Consider

Four alternatives were analyzed in detail in the Draft EIS. These alternatives were:

• Alternative A, No Action—Proposed actions would be deferred at this time.

• Alternative B—Promote late succession habitat and increase diversity while reducing fuels and insect infestation risk; amend the Forest Plan to allow deviations from thermal cover and goshawk standards.

• Alternative C—Proposed Action—Aggressively treat forest vegetation to reduce fire and fuels hazards; prohibit off-road motorized travel in the project area; amend the Forest Plan to allow for a change in management area designation and deviations from thermal cover and goshawk standards.

• Alternative D—Focus treatments near private lands and in other strategic locations; de-emphasize the use of commercial timber harvest and feature broadcast burning and fuel breaks; amend the Forest Plan to allow deviations from thermal cover guidelines.

Alternative C was the preferred alternative in the Draft EIS.

Responsible Official

Marisue Hilliard, Acting Forest Supervisor, Black Hills National Forest, is the responsible official. The address is Black Hills National Forest, 25041 N. Highway 16, Custer, South Dakota 57730. The telephone is (605) 673–9200.

Nature of Decision To Be Made

The decisions to be made are whether or not to implement the proposed action or alternatives at this time; and, whether to amend the Revised Forest Plan to allow a change in management area designation for part of the project area, deviations in guidelines for thermal cover, and deviations in goshawk habitat standards.

Dated: May 23, 2005.

Marisue Hilliard,

Acting Forest Supervisor.

[FR Doc. 05–10640 Filed 5–26–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Wednesday, June 1, 2005 at 6 p.m. at the Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: June 1, 2005.

ADDRESSES: Kootenai National Forest, Supervisor's Office, 1101 U.S. Hwy 2, West, Libby, Montana.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include acceptance of project proposals for funding in fiscal year 2006, status of approved projects, and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: May 23, 2005.

Mark Romey,

Acting Forest Supervisor.

[FR Doc. 05–10646 Filed 5–26–05; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

Comments Must be Received on or Before: June 26, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions: If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish

the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Amazing Micro Mop Refill.
NSN: M.R. 1059—Amazing Micro Mop Refill.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, Washington.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.
Product/NSN: Cap, Utility, Camouflage Type II without insignia.
NSN: 8405–01–246–4182—Small.
NSN: 8405–01–246–4183—Medium.
NSN: 8405–01–246–4184—Large.
NSN: 8405–01–246–4185—X–Large.
NSN: 8405–01–246–4181—X–Small.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Memorandum Book.
NSN: 7530–00–222–0078—Memorandum Book—6″ × 3½″.
NSN: 7530–01–060–7511—Memorandum Book—3½″ × 4½″.
NSN: 7530–00–243–9366—Memorandum Book—3½″ × 6″.
NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.
Contracting Activity: Government Printing Office, Washington, DC.

Service

Service Type/Location: Custodial Services,
Social Security Administration, 2401 Lind Street, Quincy, Illinois.
NPA: Transitions of Western Illinois, Inc., Quincy, Illinois.
Contracting Activity: GSA, Public Buildings Service—5P, Chicago, Illinois.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Maintenance and Repair of Portable Light Towers, Basewide, Fort Hood, Texas.
NPA: Professional Contract Services, Inc., Austin, Texas.
Contracting Activity: Army III Corps and Ft Hood Contracting CMD, Ft. Hood, Texas.

G. John Heyer,

General Counsel.

[FR Doc. 05–10647 Filed 5–26–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

Effective Date: June 26, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: *Additions:* On March 18, and April 1, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 13166, and 16797) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Services, U.S. Geological Survey—Office of Acquisition & Grants, 12201 Sunrise Valley Drive, Reston, Virginia.
NPA: Davis Memorial Goodwill Industries, Washington, DC.
Contracting Activity: DOI–USGS Office of Acquisition and Grants, Reston, Virginia.
Service Type/Location: Document Destruction, USDA, Forest Service, 101 B Sun Avenue, NE, Albuquerque, New Mexico.
NPA: Adelante Development Center, Inc., Albuquerque, New Mexico.
Contracting Activity: USDA, Forest Service, Albuquerque, New Mexico.
Service Type/Location: Grounds Maintenance, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC.
NPA: Davis Memorial Goodwill Industries, Washington, DC.
Contracting Activity: Bureau of Engraving

and Printing, Washington, DC.

Deletions: On April 1, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 16797/98) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the product and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services deleted from the Procurement List.

End of Certification

Accordingly, the following product and services are deleted from the Procurement List:

Product

Product: Pen, Executive, In-Puria Tri-Wood, Rollerball.
NSN: 7520–01–484–4576—Pen Executive, In-Puria Tri-Wood, Rollerball.
NPA: Tarrant County Association for the Blind, Fort Worth, Texas.
Contracting Activity: GSA/Office Supplies & Paper Products Acquisition Center New York, New York.

Services

Service Type/Location: Commissary Shelf Stocking, Cecil Field Naval Air Station, Jacksonville, Florida.
NPA: CCAR Services, Inc., Green Cove Springs, Florida.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, Virginia.
NPA: Goodwill Services, Inc., Richmond, Virginia.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Fort McClellan, Alabama.
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Naval Training Center Complex, 2500 Leahy Avenue, Orlando, Florida.
NPA: None currently authorized.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Roosevelt Roads Naval Station, Cieba, Puerto Rico.
NPA: Brevard Achievement Center, Inc., Rockledge, Florida.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Janitorial/Custodial, Cecil Field Naval Air Station Commissary, Jacksonville, Florida.
NPA: CCAR Services, Inc., Green Cove Springs, Florida.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

G. John Heyer,
General Counsel.

[FR Doc. 05–10648 Filed 5–26–05; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 050518134–5134–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Revised Stockpile Disposal Levels for FY 2006

AGENCY: U.S. Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of proposed changes in the disposal levels of excess Chromium Metal, Ferrochromium, and Tungsten ores and concentrates under the Fiscal Year (FY) 2006 Annual Materials Plan (AMP).

DATES: Comments must be received by June 27, 2005.

ADDRESSES: Written comments should be sent to either William J. Denk, Co-chair, National Defense Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Fax: (202) 482–5650; E-mail: *wdenk@bis.doc.gov;* or to E. James Steele, Co-chair, National Defense Stockpile Market Impact Committee, Office of Bilateral Trade Affairs, Bureau of Economic and Business Affairs, U.S. Department of State, Fax: (202) 647–8758; E-mail: *steeleej2@state.gov.*

FOR FURTHER INFORMATION CONTACT: Eddy Aparicio, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: (202) 482–8234; e-mail: *eaparici@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (''DOD''), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (''FY'') 1993 National Defense Authorization Act (''NDAA'') (50 U.S.C. 98h-1) formally established a Market Impact Committee (''the Committee'') to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

The National Defense Stockpile Administrator is proposing revisions of the previously approved FY 2006 Annual Materials Plan (''AMP'') quantities for three materials, (1) Chromium Metal, from the previously approved 500 short tons to the newly proposed 1000 short tons, (2) Ferrochromium, from the previously approved 110,000 short tons to the newly proposed 150,000 short tons, and lastly (3) Tungsten ores and concentrates from the previously approved 5,000,000 pounds to the newly proposed 20,000,000 pounds. The Committee is seeking public comments on the potential market impact of the sale of these three materials at the newly proposed levels for the FY 2006 AMP.

The AMP quantities are not targets for either sale or disposal. They are only a

statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by June 27, 2005, to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comments are an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1, *et seq.*). Specifically, the Bureau of Industry and Security's Freedom of Information Act (FOIA) reading room is located on its web page found at *http://www.bis.doc.gov/foia/default.htm.* Copies of the public comments received will be maintained on the website. If requesters cannot access the web site, they may call (202) 482–2165 for assistance.

Dated: May 24, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–10617 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

ACTION: Notice of Initiation of Anticumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumpting duty order in part.

EFFECTIVE DATE: May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Certain Steel Concrete Reinforcing Bars from Turkey.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2006.

	Period to be reviewed
Antidumping Duty Proceedings	
The People's Republic of China: Automotive Replacement Glass Windshields [1] A–570–867	4/1/04–3/31/05
Changchum Pilkington Safety Glass Company, Ltd.	
Shenzen CSG Automotive Glass Co., Ltd.	
Wuhan Yaohua Pilkington Safety Glass Company, Ltd.	
The People's Republic of China: Brake Rotors [2] A–570–846	4/1/04–3/31/05
China National Machinery and Equipment Import & Export (Xianjiang) Corporation, and manufactured by *any company other than* Zibo Botai Manufacturing Co., Ltd.	
National Automotive Industry Import & Export Corporation or China National Automotive Industry Import & Export Corporation, and manufactured by *any company other than* Shandong Laizhou CAPCO Industry (''Laizhou CAPCO'')	
Laizhou CAPCO, and manufactured by *any company other than* Laizhou CAPCO	
Laizhou Luyuan Automobile Fittings Co., and manufactured by *any company other than* Laizhou Luyuan Automobile Fittings Co., or Shenyang Honbase Machinery Co., Ltd.	
Shenyang Honbase Machinery Co., Ltd., and manufactured by *any company other than* Laizhou Luyuan Automobile Fittings Co., or Shenyang Honbase Machinery Co., Ltd.,	
China National Machinery Import & Export Company	
Laizhou Auto Brake Equipment Factory	
Qingdao Gren Co.	
Yantai Winhere Auto-Part Manufacturing Co., Ltd.	
Longkou Haimeng Machinery Co., Ltd.	
Zibo Luzhou Automobile Parts Co., Ltd.	
Laizhou Hongda Auto Replacement Parts Co., Ltd.	
Hongfa Machinery (Dalian) Co., Ltd.	
Qingdao Meita Automotive Industry Co., Ltd.	
Laizhou Huanri Automobile Parts Co., Ltd.	
Shangdong Huanri Group General Co.	
Longkou TLC Machinery Co., Ltd.	

	Period to be reviewed
Zibo Golden Harvest Machinery Limited Company	
Shanxi Fengkun Metalurgical Limited Company	
Xianghe Xumingyuan Auto Parts Co., Ltd.	
Xiangfen Hengtai Brake System Co., Ltd.	
Laizhou City Luqi Machinery Co., Ltd.	
Qingdao Rótec Auto Parts Co., Ltd.	
Shenyang Yinghao Machinery Co.	
Longkou Jinzheng Machinery Co.	
Dixion Brake System (Longkou) Ltd.	
Laizhou Wally Automobile Co., Ltd.	
The People's Republic of China: Non-Malleable Cast Iron Pipe Fittings [3] A–570–875	4/1/04–3/31/05
Buxin Myland (Foundry) Ltd.	
Myland Industrial Co., Ltd.	
Turkey: Certain Steel Concrete Reinforcing Bars A–489–807	4/1/04–3/31/05
Akmisa Foreign Trade Ltd., Co.	
Buyurgan Group Steel Division and Metalenerji A.S.	
Cag Celif Demir ve Celik Endustri A.S.	
Cebitas Demir Celik Endustrisi A.S.	
Cemtas Celik Makina Sanayi ve Ticaret A.S.	
Colakoglu Metalurji A.S. and Colokaglu Dis Ticaret	
Cukurova Celik Endustrisi A.S.	
Demirsan Haddecilik Sanayi ve Ticaret A.S.	
DHT Metal	
Diler Demir Celik Endustrisi ve Ticaret A.S.	
Efesan Demir Sanayi ve Ticaret A.S. and Efe Demir Celik (The Efe Group)	
Ege Celik Endustrisi Sanayi ve Ticaret A.S.	
Ege Metal Demir Celik Sanayi ve Ticaret A.S.	
Ekinciler Holding A.S. and Ekinciler Demir ve Celik Sanayi A.S.	
HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	
ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S.	
Ilhanlar Rolling and Textile Industries, Ltd., Sti. and Ilhanlar Group	
Intermet A.S.	
Iskenderun Iron & Steel Works Co.	
Izmir Demir Celik Sanayi A.S.	
Kaptan Demir Celik Endustri ve Ticaret A.S.	
Kardemir—Karabuk Demir Celik Sanayi ve Ticaret A.S.	
Koc Dis Ticaret A.S.	
Kroman Steel Industries Co. (Droman Celik Sanayi A.S.)	
Kurum Steel Co. (Kurum Demir San. ve Ticaret Metalenerji A.S.)	
Metas Izmir Metalurji Fabrikasi Turk A.S.	
Nurmet Celik Sanayi ve Ticaret A.S.	
Nursan Celik Sanayi ve Haddecilik A.S.	
Sivas Demir Celik Isletmeleri A.S.	
Sozer Steel Works	
ST Steel Industry and Foreign Trade Ltd. Sti.	
Tosyali Demir Celik Sanayi A.S.	
Ucel Haddecilik Sanayi ve Ticaret A.S.	
Yazici Demir Celik Sanayi ve Ticaret A.S. and Diler Dis Ticaret A.S.	
Yesilyurt Demir Celik	
Yesilyurt Demir Cekme San ve Tic Ltd. Sirketi	
Yolbulan Group (Yolbulanlar Nak. ve Ticaret A.S., Yolbulan Metal Sanayi ve Ticaret A.S. and Yolbulan Dis Ticaret Ltd. Sti.	
Countervailing Duty Proceeding	
None.	
Suspension Agreements	
None.	

[1] If one of the named companies does not qualify for a separate rate, all other exporters of automotive replacement glass windshields from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the named companies does not qualify for a separate rate, all other exporters of brake rotors from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the named companies does not qualify for a separate rate, all other exporters of non-malleable cast iron pipe fittings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the

review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 23, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office for Import Administration.

[FR Doc. 05–10673 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

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

SUMMARY: The Department of Commerce received a request on March 23, 2005, to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''). In accordance with 19 CFR 351.214(d), we are initiating a new shipper review for the company that requested such a review: Shanxi Zhongding Auto Parts Co., Ltd. (''Shanxi Zhongding''), which is a producer and exporter of brake rotors from the PRC.

EFFECTIVE DATE: May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Edward Jacobson or Brian Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5460 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request on March 23, 2005, from Shanxi Zhongding in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the PRC, which has an April anniversary month. In response to the Department's April 14, 2005, request, Shanxi Zhongding provided supplemental information on April 29, 2005.

Shanxi Zhongding identified itself as the producer of the brake rotors it exports. As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), Shanxi Zhongding has certified that it did not export brake rotors to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI (*see* Shanxi Zhongding's March 23, 2005, submission). Shanxi Zhongding has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to 19 CFR 351.214(b)(2)(iv)(A), Shanxi Zhongding provided the date of the first sale to an unaffiliated customer in the United States. Shanxi Zhongding submitted documentation establishing the date on which it first shipped the subject merchandise to the United States and the volume and date of entry of that shipment.

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(b), and based on our analysis of the information and documentation provided with the new shipper review request, as well as our analysis of proprietary import data from U.S. Customs and Border Protection (''CBP''), we find that Shanxi Zhongding has met the requirements for the Department to initiate a new shipper review (for more details, *see* New Shipper Initiation Checklist for Shanxi Zhongding). Therefore, we are initiating a new shipper review for Shanxi Zhongding.

In cases involving non-market economies, it is the Department's normal practice to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities (*see Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China*, 68 FR 57875 (October 7, 2003)). Accordingly, we will issue a questionnaire to Shanxi Zhongding (including a complete separate rates section), allowing approximately 37 days for response. If the response from Shanxi Zhongding provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review will proceed. If, on the other hand, the respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and not entitled to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. Normally, we would issue the preliminary results of this review not later than 180 days after the date on which the review is initiated. However, on April 29, 2005, Shanxi Zhongding agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrent with the eighth administrative review of this order for the period April 1, 2004–March 31, 2005, which is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the preliminary results of this review not later than 245 days after the last day of the anniversary month.

Antidumping duty new shipper review	Period to be reviewed
PRC: Brake Rotors, A–570–846: Shanxi Zhongding Auto Parts Co., Ltd	04/01/04–03/31/05

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Shanxi Zhongding. This action is in accordance with section 751(a)(2)(B)(iii) of the Act, and 19 CFR 351.214(e). Because Shanxi Zhongding has certified that it both produces and exports the subject merchandise, the sale of which was the basis for its new shipper review request, we will apply the bonding privilege only to entries of subject merchandise for which it is both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Dated: May 23, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2705 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Promotion Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce

ACTION: Notice of open meeting.

DATE: June 10, 2005.

TIME: 9–11:30 a.m.

PLACE: Hotel George, 15 E Street, NW., Washington, DC 20001. Tel: (202) 347–4213.

SUMMARY: The United States Travel and Tourism Promotion Advisory Board (Board) will hold a Board meeting on June 10, 2005 at the Hotel George, 15 E Street, NW., Washington, DC 20001.

The Board will discuss the results of the international advertising and promotion campaign launched in the United Kingdom in 2004/2005, which sought to encourage individuals to travel to the United States for the express purpose of engaging in tourism. The meeting will be open to the public. Time will be permitted for public comment. To sign up for public comment, please contact Julie Heizer at least 24 hours before the start of the meeting.

Julie Heizer may be contacted at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 5204, Washington, DC 20230; via fax at (202) 482–2887; or, via e-mail at *promotion@tinet.ita.doc.gov.*

Written comments concerning Board affairs are welcome anytime before or after the meeting. Written comments should be directed to Julie Heizer. Minutes will be available within 60 days of this meeting.

The Board is mandated by Public Law 108–7, Section 210. As directed by Public Law 108–7, Section 210, the Secretary of Commerce shall design, develop and implement an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States. The Board shall recommend to the Secretary of Commerce the appropriate coordinated activities for funding. This campaign shall be a multi-media effort that seeks to leverage the Federal dollars with contributions of cash and in-kind products unique to the travel and tourism industry. The Board was chartered in August of 2003 and will expire on August 8, 2005.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OTTI.

Dated: May 26, 2005.

Julie P. Heizer,

Deputy Director, Industry Relations, Office of Travel and Tourism Industries.

[FR Doc. E5–2684 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031105D]

Endangered Fish and Wildlife; Marine Mammal Protection Act; Draft Conservation Plan for the Cook Inlet Stock of Beluga Whales; Reopening of Comment Period

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

ACTION: Notice of availability of draft conservation plan; reopening of public comment period.

SUMMARY: NMFS is reopening the comment period for the draft conservation plan for Cook Inlet beluga whales. The initial comment period ended May 16, 2005. The draft conservation plan is intended to promote the conservation and recovery of these whales so they are no longer considered depleted under the Marine Mammal Protection Act.

DATES: Written comments and information must be received by June 27, 2005.

ADDRESSES: Copies of the draft conservation plan may be reviewed and/or copied at NMFS, Protected Resources Division, 222 W. 7th Ave., (room 517), Anchorage, AK 99513; or at the NMFS Alaska Regional Office, Protected Resources Division, 709 W. 9th St., P.O. Box 21668, Juneau, AK 99802. It is available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm.*

Comments on the draft conservation plan should be sent to the above addresses or may be submitted by email to the following address: *CIB-CP-NOA@noaa.gov.* Please identify electronic comments with the subject line: Beluga Whale Conservation Plan.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NOAA/NMFS, Alaska Region, (907)586–7235, or Brad Smith, NOAA/NMFS, Alaska Region, Anchorage Field Office, (907)271–5006.

SUPPLEMENTARY INFORMATION: On March 16, 2005, NMFS announced the availability of a draft conservation plan for Cook Inlet beluga whales for public review and comment (70 FR 12853). The comment period for the draft plan ended May 16, 2005. During the comment period, several parties requested additional time to review the document and develop comments. Pursuant to these requests, NMFS is reopening the comment period for the draft plan for an additional 30-day period.

Dated: May 23, 2005.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–10668 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020205E]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

ACTION: Notice of issuance of an incidental take permit.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to The Boeing Company (Boeing) to take marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB).

DATES: Effective from May 20, 2005, through May 19, 2006.

ADDRESSES: A copy of the IHA and the application are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the

application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/prot_res/PR1/Small_Take/smalltake_info.htm#applications*.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, (301) 713–2289, ext. 166 or Monica DeAngelis, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On December 21, 2004, NMFS received an application from Boeing requesting a renewal of an authorization for the harassment of small numbers of Pacific harbor seals (Phoca vitulina richardsi) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in even smaller numbers. Incidental Harassment Authorizations (IHAs) were issued to Boeing on May 15, 2002 (67 FR 36151, May 23, 2002), May 20, 2003 (68 FR 36540, June 18, 2003), and on May 20, 2004 (69 FR 29696, May 25, 2004) each for a 1–year period. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point).

Comments and Responses

A notice of receipt of the Boeing application and proposed IHA was published in the **Federal Register** on March 23, 2005 (70 FR 14651). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission) and from six individuals.

Comment 1: The Commission states that NMFS' preliminary determinations are reasonable provided that all reasonable measures will be taken to ensure the least practicable impact on the subject species and the required mitigation and monitoring activities are carried out as described in the March 23, 2005 **Federal Register** notice and the subject application.

Response: NMFS appreciates the Commission's comment and is requiring all mitigation and monitoring activities that have been described in Boeing's application. NMFS is also requiring Boeing to take all reasonable measures to ensure the least practicable impact on the species, such as turning on lighting before dusk and initiating activities before dusk if Boeing will be conducting harbor activities at night.

Comment 2: Two individuals expressed concerns that NMFS would be authorizing Boeing to harm or kill marine mammals in the course of this project. Another individual asked exactly what the harassment entailed.

Response: Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment'']. The harassment authorized under this IHA is expected to be in the form of visual and acoustic stimuli resulting from dredging and vessel operations.

The taking by serious injury or death of any marine mammal is not authorized by this IHA and would result in the modification, suspension or revocation of this Authorization. NMFS anticipates that Boeing's harbor activities will result in no more than Level B Harassment that is limited to short term and localized behavioral changes, such as startle reactions or flushes of low numbers of individuals from haul-out sites.

Comment 3: One individual felt that Boeing should not be permitted to dredge the harbor at VAFB without disclosing to the public the reasons dredging is needed. Another individual also wanted to know why VAFB needed to dredge the harbor. Another individual, in reference to the dredging, thought that a blanket approval to harass animals for 3–5 weeks was extreme.

Response: Boeing disclosed to the public the need for dredging in the 2001 Final USAF EA for Harbor Activities Associated with the Delta IV Program at VAFB. As explained in that document, when this project was scheduled to begin, the harbor had not been dredged since 1989 and was filled with sediment to approximately the 0 foot mean lower low water (MLLW) level at the foot of the dock. The *Delta Mariner* has an absolute minimum draft of approximately 8 ft (2.4 m) and a working minimum draft of approximately 9 ft (2.7 m). To accommodate the *Delta Mariner* the harbor needed to be dredged to its original working depth of 10 ft (3.0m) MLLW plus a 2–ft (0.6 m) overdredge. VAFB is located along a very dynamic section of the coast and the sediment accumulation rate is estimated at 1 foot per year. Boeing anticipates the need for dredging annually or twice per year,

depending on the hardware delivery schedule.

The schedule for dredging is also addressed in the 2001 USAF EA. Using methods outlined in a Water Quality Management Plan, dredging is expected to proceed at a rate of 2,000 cubic yards per day (maximum total removal of 3,000 cubic yards per maintenance dredge), which would take a maximum of 2 days. A five-day buffer was added to allow for bad weather or other problems. Additionally, it takes approximately 1 week to stage the equipment prior to dredging and approximately 1 week to demobilize the operation after the dredging.

Comment 4: One individual thought that Boeing should submit proposals for alternate sites for the proposed activities.

Response: As discussed in the 2001 USAF EA, the VAFB harbor is the only existing facility along the VAFB coast that can be used for off-loading CBC's for ready transport to Space Launch Complex 6 (SLC–6), where Boeing's Delta IV rockets will be launched. Boeing completed a transportation study and concluded that the common booster cores are too large to be feasibly transported from other harbors that could accommodate the Delta Mariner.

In the Final Environmental Impact Statement for the Evolved Expendable Launch Vehicle Program (1998), alternate sites to VAFB for the whole program were considered.

Comment 5: One individual thought that work done on or near a National Wildlife Reserve must be conducted with extreme caution.

Response: VAFB is sometimes referred to as a National Wildlife Reserve to illustrate its commitment to protecting natural resources. National Wildlife Reserve is not an official designation as applied to VAFB and does not have any associated requirements.

Comment 6: One individual asked what kind of precautions Boeing would use when doing the dredging. The individual also asked if barriers could be used.

Response: Due to methods used for dredging, which involve a crane with a clamshell dredge positioned either on the dock or a barge, NMFS does not believe that the construction of a barrier would be an effective way to reduce the visual or audio stimuli that the affected pinnipeds are exposed to. The precautions to be taken during dredging are outlined in the Mitigation section of this document and include the continuous, versus start and stop, operation of heavy machinery, the initiation of all nighttime activities before dark, and the turning on of lights prior to dusk when operations are to take place at night. These measures are intended to reduce marine mammal startle reactions to the operations. Additionally, observers will monitor the animals before, during, and after all harbor operations that occur when the tide is low enough for pinnipeds to be hauled out.

Comment 7: One individual was concerned about the potential harm to the sea otter population.

Response: VAFB formally consulted with the U.S. Fish and Wildlife Service (USFWS) regarding possible take of the southern sea otter. A Biological Opinion was issued in August 2001, which found that Boeing's harbor activities will not jeopardize the continued existence of the southern sea otter. This IHA does not alter the action in a manner that was not previously analyzed in that consultation.

Specified Activities

Delta Mariner off-loading operations and associated cargo movements will occur a maximum of 3 times per year. The *Delta Mariner* is a 312–ft (95.1–m) long, 84–ft (25.6–m) wide steel hull ocean-going vessel capable of operating at a 8–ft (2.4–m) draft. For all visits to the south VAFB harbor, tug boats will accompany the *Delta Mariner*. Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the common booster core (CBC) from the *Delta Mariner* requires use of an elevating platform transporter (EPT), an additional source of noise with sound levels measured at approximately 85 dB A-weighted (re 20 microPascals at 1–m) 20 ft (6.1 m) from the engine exhaust when the engine is running mid-speed (Acentech, 1998). Procedures require two short (approximately 1/3 second) beeps of the horn prior to starting the ignition. The sound level of the EPT horn ranged from 62–70 dB A-weighted at 200 ft (60.9 m) away, and 84–112 dB A-weighted at 25 ft (7.6 m) away. Containers containing flight hardware items will be towed off the *Delta Mariner* by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 50 ft (15.2 m) while in operational mode. Total time of *Delta Mariner* docking and cargo movement has been 4 to 8 hours, during periods of daylight and high tide, for the first two arrivals. Maximum anticipated time is 14 hours.

To continue to accommodate the *Delta Mariner*, the harbor will need to be maintenance dredged, removing approximately 3,000 to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 43 to 81 dB A-weighted at 250 ft (76.2 m). Dredge operations, from set-up to tear-down, would continue 24–hours a day for 2 to 3 weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2005 is contained in the application which is available upon request (see **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Habitat and Marine Mammals Affected by the Activity

Pacific Harbor Seals

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent estimate of the Pacific harbor seal population in California is 27,863 seals. Since 1990 there has been no net population growth along the mainland or the Channel Islands. The decrease in population growth rate has occurred at the same time as a decrease in human-caused mortality and may indicate that the population has reached its environmental carrying capacity (Carretta et al., 2004). The total population of harbor seals on VAFB is now estimated to be 1,099 (maximum of 515 seals hauled out at one time on south VAFB) based on sighting surveys and telemetry data (SRS Technologies, 2003).

The daily haul-out behavior of harbor seals along the south VAFB coastline is primarily dependent on time of day. The highest number of seals haul-out at south VAFB between 1100 through 1600 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 250 ft (76.2 m) west of the south VAFB

harbor and on rocks outside the harbor breakwater where Boeing will be conducting *Delta Mariner* operations, cargo loading, dredging activities, and reef enhancement activities. The maximum number of seals present during the 2001 dredging of the harbor was 23 (averaging 7 per observation period) and the maximum number hauled out during the 2002 wharf modification activities was 43, averaging 21 per day when tidal conditions were favorable for hauling out. Dredging and reef enhancement did not occur in 2004. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1 mi (1.6 km) north of the harbor.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

California Sea Lions

During the wharf modification activity in June-July 2002, California sea lions were observed hauling out on the breakwater in small numbers (up to 6 individuals). Although this is considered to be an unusual occurrence and is possibly related to fish schooling in the area, Boeing included sea lions in their request.

California sea lions range from British Columbia to Mexico. The most recent population estimates for the California sea lions range from 237,000 to 244,000 individuals (Caretta et al., 2004). Between 1975 and 2001, the population growth rate was 5.4–6.1 percent. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island, with the population ranging from 2,235 to over 17,000. The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. At least 100 sea lions can be observed during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. In 2003, at least 145 sea lions were observed at Rocky Point, including five pups that did not survive due to abandonment shortly after birth. This was thought to be an El Nino effect, as there had never been any previously reported sea lion births at VAFB (Thorson, 2003).

Each year, small groups of sea lions have been observed heading south along the VAFB coastline in April and May (Tetra Tech, 1997). Starting in August, large groups of sea lions can be seen moving north, in groups varying in size from 25 to more than 300 (Roest, 1995). This concurs with established migration patterns (Reeves et al., 1992; Roest, 1995). Juvenile sea lions can be observed hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997). Starving and exhausted subadult sea lions are fairly common on central California beaches during the months of July and August (Roest, 1995).

During the breeding season, most of California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to San Miguel Island and to the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest number on land occurs in September and October during the post-breeding dispersal, although many of the sea lions, particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

Other Marine Mammals

Other pinniped species are rare to infrequent along the south VAFB coast and are unlikely to be harassed by Boeing's activities. These four species are: the northern elephant seal, the northern fur seal (*Callorhinus ursinus*), Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lion (*Eumetopias jubatus*). Northern elephant seals may occur on VAFB but do not haul out in the harbor area. Northern fur seals, Guadalupe fur seals and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). NMFS Stock Assessments can be viewed at: *http://www.NMFS.noaa.gov/pr/PR2/Stock__Assessment__Program/sars.html*. Please refer to those documents for information on these species.

Southern sea otters have occasionally been observed foraging in the kelp beds in the VAFB harbor. Potential take of sea otters during Boeing's harbor activities was addressed by the USFWS in their 2001 Biological Opinion, which found that Boeing's harbor activities will not jeopardize the continued existence of the southern sea otter.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations, dredging, and kelp habitat mitigation, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dBA of noise would be approximately 72 dBA at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The EPT produces approximately 85 dBA, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately 1/3 of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84 to 112 dBA at

25 ft (7.6 m) away and 62 to 70 dBA at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the horn is mounted. Ambient background noise measured approximately 250 ft (76.2 m) from the beach was estimated to be 35–48 dB A-weighted (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a ''looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a ''looming'' visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

According to the MMPA, if harbor activities disrupt the behavioral patterns of harbor seals, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause serious injury or mortality to marine mammals.

On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may rise to the level of Level B harassment and could result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, because on average the number of harbor seals hauled out near the site on average is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report (ENSRI, 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to fishing activities which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks and there was only one incident of a head alert reaction.

The report from the December 2002 dredging activities show that the number of Pacific harbor seals ranged from 0 to 19 and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application and NMFS' 2005 Environmental Assessment. Information contained in the application and referenced sources as updated by recent monitoring reports is adopted by NMFS as the best information available on this subject.

Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities (see Monitoring).

(6) The Delta Mariner and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and mooring dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Monitoring

As part of its 2002 application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for this IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

Numbers of Marine Mammals Expected to be Harassed

Boeing estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a

daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen twice a day, and using a maximum total of 73 operating days in 2005–2006, NMFS estimates that a maximum of 767 to 1570 Pacific harbor seals may be subject to Level B harassment.

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day. Based on the above-mentioned calculation, NMFS believes that a maximum of 219 California sea lions and 10 northern elephant seals (because they may be in nearby waters) may be subject to Level B harassment.

Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

Boeing anticipates unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, Boeing will mitigate for the removal of kelp habitat by placing 150 tons of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a diameter of about 2 ft (0.61 m) and each weighing about one ton. The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. Boeing plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and thus, there are no anticipated effects on subsistence needs.

Conclusions

NMFS has determined that the impact of conducting harbor activities related to the Delta IV/EELV at VAFB, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation would result in the harassment of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. While behavioral modifications may be made by harbor seals and California sea lions to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since these species haul out in such small numbers near the site (maximum number of harbor seals hauled out in one day estimated at 43 seals, averaging at 21 seals per day, maximum number of California sea lions hauled out in one day is estimated at six). The effects of Boeing's harbor activities are expected to be limited to short-term and localized behavioral changes.

Due to the localized nature of these activities, the number of marine mammals potentially taken by harassment are estimated to be small. In addition, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels expected at the site. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Endangered Species Act

This action will not affect species listed under the Endangered Species Act (ESA) that are under the jurisdiction of NMFS. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued by the USFWS in August 2001, which found that Boeing's harbor activities will not jeopardize the continued existence of the southern sea otter. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

National Environmental Policy Act

In 2001, the USAF prepared an Environmental Assessment (EA) for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base. In 2005, NMFS prepared an EA supplementing the information contained in the USAF EA and issued a Finding of No Significant Impact on the issuance of an IHA for Boeing's harbor activities in accordance with section 6.01 of the National Oceanic and Atmospheric Administration Administrative Order (NAO) 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). Accordingly, an Environmental Impact Statement is not required.

Authorization

NMFS has issued an IHA to take marine mammals, by harassment, incidental to conducting harbor activities at VAFB to Boeing for a 1–year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: May 23, 2005.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–10669 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052305B]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

ACTION: Notice; public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Atlantic Mackerel, Squid, Butterfish Committee; its Tilefish Committee; its Ecosystems Committee; and, its Executive Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, June 14, 2005, through

Thursday, June 16, 2005. For specific dates, times, and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Meeting address*: This meeting will be at the Wyndham Hotel, 700 King Street, Wilmington, DE 19801; telephone: 302–655–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda items for the Council's committees and the Council itself are: on Tuesday, June 14, 2005, from 10 a.m. to 1 p.m.; the Atlantic Mackerel, Squid, and Butterfish Committee will meet to review the Monitoring Committee's recommendations for 2006 quota levels and associated management measures, and develop recommendations for 2006 quota specifications and associated management measures for Council consideration and action. The Tilefish Committee and its advisors will meet from 2 p.m. to 5 p.m., to review and discuss comments received during the scoping process, review and discuss Amendment 1 options paper, and select management measures for inclusion in the Draft Environmental Impact Statement (DEIS) in support of Amendment 1. On Wednesday, June 15, the Council will convene from 8:30 a.m. to 10:30 a.m., to review the Atlantic Mackerel, Squid, and Butterfish Committee's recommendations and develop and adopt 2006 quota specifications and associated management measures; from 10:30 a.m. to 12 noon, the Council will approve the May Council meeting minutes and action items from the May Council meeting. The Council will also hear organizational and liaison reports, the Executive Director's report, and a report on the status of the MAFMC's FMPs. From 1 p.m. to 3 p.m., the Council will hold its first meeting for Framework 6 to the Summer Flounder, Scup, and Black Sea Bass FMP to review options regarding sub-regionalization of state jurisdictions for the recreational fishery and utilization of multiple years for data analyses, and review and address compatibility with ASMFC's Addendum 17; from 3 p.m. to 3:15 p.m., the Council will approve Framework 1 to the Spiny Dogfish FMP for submission to the Secretary; and, the Ecosystems Committee will meet from 3:15 p.m. to 5 p.m., to review draft background information for the public meeting document. On Thursday, June 16, the Executive Committee will meet from 8 a.m. to 9 a.m., to review the Statement of Operating Practices and Procedures (SOPP) for needed changes; the Council will meet from 9 a.m. to 11:30 a.m., to develop and adopt multi-year quota specifications and associated management measures for surfclams and ocean quahogs; and at 11:30 a.m., will hear Committee reports, and entertain any new and/or continuing business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council(s intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Collins (302–674–2331) at least 5 days prior to the meeting date.

Dated: May 24, 2005.

Emily Menashes,

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

[FR Doc. E5–2697 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052305C]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice; public meetings.

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

DATES: The Council and its advisory entities will meet June 12–17, 2005. The Council meeting will begin on Monday, June 13, at 1 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held at 1 p.m. until 2 p.m. on Monday, June 13 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Crowne Plaza Hotel, 1221 Chess Drive, Foster City, CA 94404; telephone: 650–570–5700.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

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

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

A. Call to Order
1. Opening Remarks, Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Administrative Matters
1. Approval of Council Meeting Minutes
2. Legislative Matters
3. Appointments to Advisory Bodies, Standing Committees, and Other Forums
4. Work Load Priorities and Draft September 2005 Council Meeting Agenda

C. Groundfish Management
1. Preparatory Informational Briefing on Trawl Individual Quota (TIQ) Program Development
2. Initial Consideration of Opening Date of California Shore-based Whiting Fishery
3. Groundfish Essential Fish Habitat (EFH) Environmental Impact Statement - Final Preferred Alternative
4. Status of 2005 Groundfish Fisheries and Consideration of Inseason Adjustments
5. TIQ Program Development
6. Rebuilding Plan Revision Rules
7. Final Consideration of Inseason Adjustments, if necessary

D. Salmon Management
1. Technical Basis for the Klamath River Fall Chinook Conservation Objective
2. Status Report on Reinitiation of Consultation for California Coastal Chinook

E. Highly Migratory Species Management
1. NMFS Report
2. Draft Inter-American Tropical Tuna Commission Resolution on Albacore Tuna
3. Status of Fisheries and Preliminary Stock Assessment and Fishery Evaluation (SAFE) Report
4. Response to Overfishing of Bigeye Tuna

5. Exempted Fishing Permits
6. Management Regime for High Seas Longline Fishery

F. Coastal Pelagic Species Management
1. Pacific Mackerel Harvest Guidelines for 2005/06 Fishery
2. Fishery Management Plan Amendment 11 - Sardine Allocation
3. SAFE Document and Five-Year EFH Review

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, JUNE 12, 2005
Groundfish Advisory Subpanel–1 p.m.
Groundfish Management Team–1 p.m.
MONDAY, JUNE 13, 2005
Council Secretariat–8 a.m.
Groundfish Advisory Subpanel–8 a.m.
Groundfish Management Team–8 a.m.
Highly Migratory Species Advisory Subpanel– 8 a.m.
Highly Migratory Species Management Team–8 a.m.
Scientific and Statistical Committee–8 a.m.
Special Session: Ocean Regime Shifts–9 a.m.
Legislative Committee–9 a.m.
Special Session: Rebuilding Plan Revision Rules Policy –10:30 a.m.
Enforcement Consultants–5 p.m.
TUESDAY, JUNE 14, 2005
Council Secretariat–7 a.m.
California State Delegation–7 a.m.
Oregon State Delegation–7 a.m.
Washington State Delegation–7 a.m.
Groundfish Advisory Subpanel–8 a.m.
Groundfish Management Team–8 a.m.
Scientific and Statistical Committee–8 a.m.
Enforcement Consultants–As necessary
WEDNESDAY, JUNE 15, 2005
Council Secretariat–7 a.m.
California State Delegation–7 a.m.
Oregon State Delegation–7 a.m.
Washington State Delegation–7 a.m.
Coastal Pelagic Species Advisory Subpanel– 8 a.m.
Groundfish Advisory Subpanel–8 a.m.
Groundfish Management Team–8 a.m.
Scientific and Statistical Committee–8 a.m.
Enforcement Consultants–As necessary
THURSDAY, JUNE 16, 2005
Council Secretariat–7 a.m.
California State Delegation–7 a.m.
Oregon State Delegation–7 a.m.
Washington State Delegation–7 a.m.
Groundfish Advisory Subpanel–8 a.m.
Groundfish Management Team–8 a.m.
Enforcement Consultants–As necessary
FRIDAY, JUNE 17, 2005
Council Secretariat–7 a.m.
California State Delegation–7 a.m.
Oregon State Delegation–7 a.m.
Washington State Delegation–7 a.m.
Enforcement Consultants–As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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

Dated: May 24, 2005.

Emily Menashes,

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

[FR Doc. E5–2696 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051305C]

Endangered Species; File No. 1518

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Carlos Diez, Departamento de Recursos Naturales y Abmientales de Puerto Rico, P.O. Box 9066600, San Juan, Puerto Rico 00906–6600, has applied in due form for a permit to take hawksbill (*Eretmochelys imbricata*) and green (*Chelonia mydas*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 27, 2005.

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)427–2521; 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)427–2521, 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. 1518.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to annually capture up to 250 green and 320 hawksbill sea turtles to provide information on the ecology and population dynamics of these species. The research would take place in the waters surrounding Puerto Rico and its adjacent islands including Mona, Monito, Desecheo, Caja-de-Muertos, Vieques and Culebra. Researchers would identify marine habitat, determine distribution and abundance, determine sex ratios, evaluate the extent of ingestion of marine debris, determine growth rates and sexual maturity, and quantify threats. All turtles would be measured, weighed, tagged, and blood sampled. A subset of animals would be lavaged and have transmitters attached to them. The permit would be issued for 5 years.

Dated: May 20, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–10667 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051305B]

Marine Mammals; File No. 116–1742

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, FL 32821, has been issued an amendment to public display Permit No. 116–1742–00 to extend the expiration date through May 21, 2006.

ADDRESSES: The amendment 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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 27, 2004, notice was published in the **Federal Register** (69 FR 30287) that Permit No. 116–1742–00 had been issued to Sea World, Inc., 7007 Sea World Drive, Orlando, FL 32821, for the importation of one beluga whale (*Delphinapterus leucas*) for the purposes of public display. This permit amendment (No. 116-1742-01) extends the duration of the permit from May 21, 2005, to May 21, 2006. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: May 20, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–10666 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States-Caribbean Basin Trade Partnership Act (CBTPA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

May 25, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a petition for a determination that certain compacted, plied, ring spun cotton yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and the ATPDEA.

SUMMARY: On May 23, 2005, the Chairman of CITA received a petition from AM&S Trade Service, L.L.P., on behalf of their client, Galey and Lord, Inc., alleging that certain compacted, plied, ring spun cotton yarns, with yarn counts in the range from 42 to 102 metric, classified in subheadings 5205.42.0020, 5205.43.0020, 5205.44.0020, 5205.46.0020, 5205.47.0020 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that men's and boys' woven cotton trousers and shirts and women's and girls' woven cotton trousers, shirts and blouses from U.S.-formed fabrics containing such yarns be eligible for preferential treatment under the CBTPA and the ATPDEA. CITA hereby solicits public comments on this request, in particular with regard to whether such yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by **June 13, 2005** to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2582.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamation 7351 of October 2, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA; Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

BACKGROUND:

The CBTPA and the ATPDEA provide for duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA and the ATPDEA also provide for duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271) and pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA or the ATPDEA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On May 23, 2005, the Chairman of CITA received a petition from AM&S Trade Service, L.L.P., on behalf of their client, Galey and Lord, Inc., alleging that certain compacted, plied, ring spun cotton yarns, with yarn counts in the range from 42 to 102 metric, classified in HTSUS subheadings 5205.42.0020, 5205.43.0020, 5205.44.0020, 5205.46.0020, 5205.47.0020, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests duty-free treatment under the CBTPA and the ATPDEA for men's and boys' woven cotton trousers and shirts and women's and girls' woven cotton trousers, shirts and blouses that are both cut (or knit-to-shape) and sewn in one or more CBTPA or ATPDEA beneficiary countries from U.S.-formed fabrics containing such yarns.

CITA is soliciting public comments regarding this request, particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other

yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for this yarn for purposes of the intended use. Comments must be received no later than **June 13, 2005**. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that this yarn can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–10742 Filed 5–25–05; 2:08 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designation under the Textile and Apparel Commercial Availability Provision of the U.S. - Caribbean Basin Trade Partnership Act (CBTPA)

May 24, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Designation.

EFFECTIVE DATE: May 27, 2005.

SUMMARY: CITA has determined that certain colored, open-end spun yarns, ranging in size from 6/1 to 18/1 English count (10.16/1 to 30.47/1 metric) of a blend of reclaimed and reprocessed cotton and not less than 35 percent nor more than 49 percent by weight of Outlast licensed phase change acrylic staple fibers, produced under license from Outlast, classified in subheadings 5206.11.00.00 and 5206.12.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in chief weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA. CITA hereby designates chief weight cotton sweaters, made from knit fabrics formed in the United States or an eligible beneficiary CBTPA country from such yarns, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary country as eligible to enter free of quotas and duties under HTSUS subheading 9820.11.27, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202)482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211(a) of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Recovery Act (CBERA); Executive Order No. 13191 of January 17, 2001; Presidential Proclamation 7351 of October 2, 2000.

Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the **Federal Register**. In Executive Order No. 13191, the President authorized CITA to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On January 14, 2005, CITA received a request alleging that certain colored, open end spun yarns, of a blend of reclaimed and reprocessed cotton and not less than 35 percent nor more than 49 percent by weight of Outlast licensed phase change acrylic staple fibers, described above, for use in chief weight cotton sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA. It requested that such apparel articles, made from knit fabrics formed in the United States or an eligible beneficiary CBTPA country of such yarns, be eligible for preferential treatment under the CBTPA. On January 25, 2005, CITA requested public comment on the petition. See *Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)* (70 FR 3251, published on January 25, 2005). On February 10, 2005, CITA and the U.S. Trade Representative (USTR) sought the advice of the Industry Trade Advisory Committee for Textiles and Clothing and the Industry Trade Advisory Committee for Distribution Services. On February 10, 2005, CITA and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On February 25, 2005, the U.S. International Trade Commission provided advice on the request.

Based on the information and advice received and its understanding of the industry, CITA determined that the yarns set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On March 15, 2005, CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the CBTPA.

CITA hereby designates chief weight cotton sweaters that are both cut and sewn or otherwise assembled in one or more eligible beneficiary CBTPA beneficiary country, from knit fabrics formed in the United States or a beneficiary CBTPA country, from the yarns specified below, as eligible to enter free of quotas and duties under HTSUS subheading 9820.11.27, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 211(vii) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country. The knit fabric used in the chief weight cotton sweaters is made from colored, open-end spun yarns, ranging in size from 6/1 to 18/1 English count (10.16/1 to 30.47/1 metric) of a blend of reclaimed and reprocessed cotton and not less than 35 percent nor more than 49 percent by weight of Outlast licensed phase change acrylic staple fibers, produced under license from Outlast, classified in HTSUS subheadings 5206.11.0000 and 5206.12.0000.

An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)), and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)), and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–2706 Filed 5–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF ENERGY

Alaska Natural Gas Pipeline Loan Guarantee

AGENCY: Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy (DOE) is seeking comments and information from the public to assist DOE in developing a possible advance notice of proposed rulemaking or notice of proposed rulemaking concerning the loan guarantee provisions of the ''Alaska Natural Gas Pipeline Act.'' The Act authorizes the Secretary of Energy (Secretary) to issue Federal loan guarantees to facilitate the construction of a pipeline or liquefied natural gas project to bring natural gas from the Alaska North Slope to the continental United States.

DATES: Interested persons must submit written comments by July 26, 2005. Comments may be mailed to the address given in the **ADDRESSES** section below. Comments also may be submitted electronically by e-mailing them to: *bettie.corey@hq.doe.gov.* We note that e-mail submissions will avoid delay currently associated with security screening of U.S. Postal Service mail.

ADDRESSES: Office of the General Counsel, GC–72, Attention: Lawrence R. Oliver, U.S. Department of Energy, Forrestal Building, Room 6B–256, 1000 Independence Avenue, SW., Washington, DC 20585. DOE requires, in hard copy, a signed original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Oliver, Esq., Assistant General Counsel, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, *lawrence.oliver@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2004, the ''Alaska Natural Gas Pipeline Act,'' Division C of Pub. L. 108–324 (the ''Act''), was enacted as part of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005. The Act, as amended, generally is intended to expedite regulatory consideration, approval and construction of a pipeline or liquefied natural gas (LNG) project that would be used to transport Alaska North Slope natural gas to the continental United States, and provide financial incentives in the form of Federal loan guarantees for construction of such a pipeline or project.

Section 116 of the Act authorizes the Secretary to enter into Federal loan guarantee agreements (LGAs) for a ''Qualified Infrastructure Project'' (1) with one or more holders of a final certificate issued by the Federal Energy Regulatory Commission (FERC) under either section 103(b) of the Act or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g), and (2) with one or more owners of the Canadian portion of a ''Qualified Infrastructure Project,'' for up to $18 billion total, but no more than 80 percent of the capital costs of a project. Section 114 of Title I of Division J of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447) amended section 116 of the Act to add authority for the Secretary to enter into LGAs with an entity the Secretary determines is qualified to construct and operate an LNG project to transport LNG from ''Southcentral Alaska to West Coast States.'' The Act also authorizes the Secretary to issue loan guarantee regulations. The definition of ''qualified lender'' in the Act does not include the Federal Financing Bank.

Questions for Public Comment

DOE may issue regulations implementing the Act's loan guarantee authority and is currently analyzing this authority in the context of the Act's other provisions. Since the Act is silent on many of the customary loan guarantee requirements, DOE is considering the development and issuance of regulations that would establish certain minimum requirements or terms for such LGAs. In an effort to identify issues potentially affecting implementation of the loan guarantee authority, DOE invites interested members of the public, including lending and other financial institutions, potential project sponsors, and individuals to comment, in writing, on the following questions and to provide DOE with other information or analyses potentially relevant to the development of loan guarantee regulations and the implementation of the loan guarantee provisions in the Act.

1. *Conditional Commitment.* Section 116(a)(3) of the Act provides that ''[t]he authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project.'' Section 116(b)(1) of the Act provides that ''[t]he Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity * * * has been issued for the project, or after the Secretary certifies there exists a qualified entity to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States.''

Under these provisions the Secretary may not enter into an LGA (a negotiated document which sets forth in writing

the terms and conditions that must be met before the Secretary will issue the loan guarantees) until a certificate of public convenience and necessity has been issued by FERC or the Secretary has issued an appropriate certification in the case of an LNG project. DOE is considering whether it can or should negotiate a conditional commitment with one or more potential project sponsors prior to the time that a final certificate is issued by FERC or the Secretary issues the required certifications with respect to an LNG project. A conditional commitment would, after the terms and conditions specified therein have been satisfied, lead to the execution of an LGA after the required subsequent conditions occur. DOE is requesting comments on potential advantages and disadvantages of this approach including whether it would expedite the loan guarantee application process and at what point in the certificate application and/or project consideration process the loan guarantee application and/or negotiation process with DOE should begin.

2. *Determinations and Findings by the Secretary.* DOE is considering the desirability of requiring by rule the following findings and determinations as conditions for approval of an application for loan guarantees for a ''Qualified Infrastructure Project'': (A) That the applicant has received a final certificate from FERC or, with respect to an LNG project, that the Secretary has made a determination that the entity applying for loan guarantees is qualified to construct and operate a liquefied natural gas project ''to transport liquefied natural gas from Southcentral Alaska to West Coast States''; (B) That the project submitted for approval is a ''Qualified Infrastructure Project'' as defined in section 116(g)(4) of the Act; (C) That there is a reasonable assurance of repayment of the guaranteed debt; (D) That the guaranteed loan funds and the equity contribution of the project sponsors will be sufficient to complete the construction and start-up of the ''Qualified Infrastructure Project'' and fund any cost overruns; and (E) That the terms and conditions of the LGA provide adequate terms and security to appropriately protect the financial interests of the United States Government. DOE is requesting comments on what determinations and/or findings the Secretary should make prior to approving an LGA for one or more parts of a ''Qualified Infrastructure Project.''

3. *Special Terms and Conditions.* DOE is also requesting comments on what other terms and conditions, other than the usual project financing requirements, that are unique to construction of a natural gas pipeline or LNG facility, should be included in the regulations and whether the regulations should include requirements for such unique terms and conditions in the LGAs.

4. *Lender Risk.* Section 116(g)(3) of the Act provides that ''the term 'Federal guarantee instrument' means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.'' DOE requests comments on whether this provision precludes any ''lender risk'' on the project debt that receives a Federal guarantee and also the potential impact of 100 percent guaranteed debt on project evaluation and servicing requirements.

5. *Guarantee Fee.* DOE is considering the imposition of a loan guarantee fee on the portion of the loan that is guaranteed by DOE. DOE requests comments on how the amount of any loan guarantee fee should be determined and whether the fee should be an origination or an annual fee.

6. *Equity Funding Commitment.* Section 116(c)(1) provides that ''[t]he amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.'' Section 116(b)(3) provides that ''[t]he Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees).'' These provisions may be interpreted as in effect requiring the project sponsor to make at least a twenty (20) percent equity contribution to the project. At the time of the execution of the LGA and related documents DOE must be satisfied that necessary equity contributions can and will be made during the construction and startup phase of the project consistent with an established equity contribution schedule. DOE requests comments as to what type and form of assurance DOE should require from the project sponsors to assure that the scheduled equity contributions to the project will be available and will be made when needed.

7. *Thirty year loan guarantee term.* Section 116(d)(1) of the Act provides, in part, that ''[t]he term of any loan guarantee under this section shall not exceed 30 years.'' DOE requests comments on whether the calculation of the maximum loan guarantee ''term'', for purposes of this provision, should commence with the first construction loan borrowing and include the sum of both the construction period and long-term debt period.

8. *Collateral/Recourse/Default.* The Act is silent with regard to requirements and procedures relating to collateral for the Federally guaranteed debt. What recourse or options should the Secretary have in the event of a default. For instance, should security other than the project assets be pledged to secure the guarantee, credit and related agreements and should DOE have a first lien on all project assets? DOE requests comments on what should be included in any regulations, should DOE decide to promulgate regulations, regarding collateral requirements, recourse and default procedures.

9. *Cost Overruns.* The Act is silent on how LGAs might address cost overruns on a Qualified Infrastructure Project, or how a debt instrument guaranteed pursuant to an LGA might be used to fund cost overruns. The Act, therefore, provides no guidance on whether cost overruns can or should be funded through the authorized guaranteed debt, other debt, equity or some combination. DOE is requesting comments on how cost overruns can or should be funded and the appropriate mechanism or formula for addressing cost overruns in the LGAs and any appropriate regulations.

10. *Monitoring and Reporting Requirements.* DOE is requesting comments on appropriate required reporting to DOE to assist DOE in its monitoring responsibilities including the content and timing of such reporting generally, whether reports should address the status of loan disbursement requests, whether loan repayment status reports should be required, and the timing and content of construction status reports and other appropriate information submissions from the project sponsors.

Dated: May 23, 2005.

Mark R. Maddox,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 05–10629 Filed 5–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, June 15, 2005; 8:30 a.m. to 5 p.m.

ADDRESSES: Marriott Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Wednesday, June 15, 2005

- Reports from Department of Energy and National Science Foundation
- Perspectives from Department of Energy and National Science Foundation
- Presentation of the Implementation of the 2002 Long Range Plan Subcommittee Report
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on May 23, 2005.

R. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–10630 Filed 5–26–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–353–000]

El Paso Natural Gas Company; Notice of Application

May 19, 2005.

Take notice that El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP05–353–000 on May 16, 2005, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for authorization to abandon, in place, its Benson Compressor Station facilities, with appurtenances, located in Cochise County, Arizona. El Paso states that this station which has approximately 13,340 horsepower has become functionally obsolete and is no longer required for natural gas service, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Richard Derryberry, Director, Regulatory Affairs, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3782 or facsimile at (719) 667–7534.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2704 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–714–000 and ER05–714–001]

Gexa Energy LLC; Notice of Issuance of Order

May 19, 2005.

Gexa Energy LLC (Gexa) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for the sales of capacity and energy at market-based rates. Gexa also requested waiver of various Commission regulations. In particular, Gexa requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Gexa.

On May 18, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Gexa should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is June 17, 2005.

Absent a request to be heard in opposition by the deadline above, Gexa are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Gexa, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Gexa's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2700 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–679–000, ER05–698–001, and ER05–787–000]

Gulf States Wholesale Equity Partners, LP, Gulf States Wholesale Equity Partners II, LP; Notice of Issuance of Order

May 19, 2005.

Gulf States Wholesale Equity Partners, LP and Gulf States Wholesale Equity Partners II, LP (together, Applicants) filed an application for market-based rate authority, with an accompanying rate tariffs. The proposed rate tariffs provide for the sales of capacity and energy at market-based rates. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On May 17, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is June 16, 2005.

Absent a request to be heard in opposition by the deadline above, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicants issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2699 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–836–001, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Filings

May 18, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Service Corporation

[Docket No. ER05–836–001]

Take notice that on May 2, 2005 American Electric Power Service Corporation, (AEP), on behalf of Public Service Company of Oklahoma,

submitted an amendment to its April 15, 2005 filing of a Construction Agreement between AEP and Blue Canyon Windpower II, LLC.

Comment Date: 5 p.m. eastern time of May 25, 2005.

2. Virginia Electric and Power Company

[Docket No. ER05–885–000]

Take notice that on April 28, 2005, Virginia Electric and Power Company, (Dominion Virginia Power) submitted amendments to its Generator Interconnection and Operating Agreements with Industrial Power Generating Corporation.

Comment Date: 5 p.m. eastern time on May 27, 2005.

3. Southwest Power Pool, Inc.

[Docket Nos. RT04–1–011 and ER04–48–011]

Take notice that on May 13, 2005, Southwest Power Pool, Inc. (SPP) submitted a compliance filing pursuant to the Commission's order issued February 11, 2005, in Docket Nos. RT04–1–005 and ER04–48–005, 110 FERC ¶ 61,137.

Comment Date: 5 p.m. eastern time on June 3, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2693 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–70–000, et al.]

Neptune Regional Transmission System, LLC, et al.; Electric Rate and Corporate Filings

May 19, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Neptune Regional Transmission System, LLC; Atlantic Energy Partners LLC; NewCo LLC; EIF Neptune, LLC; Starwood Energy Investors, L.L.C.

[Docket Nos. EC05–70–000 and EL05–116–000]

On April 22, 2005, the Commission issued a Notice of Filing (Filing) regarding the application filed on April 18, 2005 by Neptune Regional Transmission System, LLC (Neptune) on behalf of Atlantic Energy Partners LLC (AEP), NewCo LLC (NewCo), EIF Neptune, LLC (EIF) and Starwood Energy Investors L.L.C. (Starwood) (collectively with Neptune, the Applicants) on April 18, 2005, requesting all necessary authorizations under section 203 of the Federal Power Act, for a transfer of jurisdictional facilities to facilitate financing and investment arrangements and for a Commission determination that AEP, EIF and Starwood are not public utilities under the Federal Power Act.

The Commission has determined that Docket No. EL05–116–000 should be assigned to the April 18, 2005 filing. Accordingly, by this notice Docket No. EL05–116–000 is added to the caption of the April 22, 2005 Notice.

Comment Date: 5 p.m. Eastern Time on May 27, 2005–05–21.

2. Baja California Power, Inc.; La Rosita Energy, B.V.; InterGen Aztec Energy III B.V.; Ocean Star V.O.F.

[Docket No. EC05–81–000]

Take notice that on May 17, 2005, Baja California Power, Inc. (BCP), La Rosita Energy, B.V. (La Rosita), InterGen Aztec Energy III B.V. (InterGen Aztec) and Ocean Star V.O.F. (collectively, the Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of an indirect disposition of jurisdictional facilities. The Applicants state that the proposed indirect disposition of jurisdictional facilities will occur in connection with the sale by Shell Generating (Holding) B.V. and Bechtel Enterprises Energy B.V. to Ocean Star V.O.F. of all of their interests in InterGen N.V. InterGen N.V. indirectly owns all of the equity interests of BCP, La Rosita and InterGen Aztec, which own and operate a six mile electric transmission line interconnecting certain generating facilities in Mexico with the San Diego Gas and Electric transmission grid.

Comment Date: 5 p.m. Eastern Time on June 8, 2005.

3. Klondike Wind Power LLC and Klondike Wind Power II LLC

[Docket No. EC05–82–000]

Take notice that on May 17, 2005, Klondike Wind Power LLC (Klondike I) and Klondike Wind Power II LLC (Klondike II) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations for authorization of a change in ownership of jurisdictional facilities. Applicants states that they seek Commission authorization to complete a proposed transaction relating to certain jurisdictional interconnection facilities located in Sherman County, Oregon.

Comment Date: 5 p.m. Eastern Time on June 8, 2005.

4. California Independent System Operator Corporation

[Docket No. EL05–114–000]

Take notice that on May 13, 2005, the California Independent System Operator Corporation (CAISO) tendered for filing a Petition requesting that the Commission issue a Declaratory Order finding that changes to the selection process for the CAISO Board of Governors (Board) recently adopted by the Board result in a CAISO governance structure that is acceptable to the Commission.

The CAISO states that this filing has been served upon the Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the CAISO Tariff.

Comment Date: 5 p.m. on May 31, 2005.

5. PTO Administrative Committee

[Docket Nos. RT04–2–015 and ER04–116–015]

Take notice that on May 12, 2005, PTO Administrative Committee (PTO AC), an informational filing was made by the New England Participating Transmission Owners Administrative Committee updating informational filings related to regional transmission charges previously submitted by the New England Power Pool (NEPOOL) on December 9, 2004 under the NEPOOL Open Access Transmission Tariff. The PTO AC states that the informational filing identifies adjustments to regional transmission service charges under section II of the ISO New England Inc. Transmission Markets and Services Tariff, designated FERC Electric Tariff No. 3 (ISO Tariff) permitted by the Commission to become effective as of February 1, 2005.

The PTO AC states that copies of these materials were sent to the New England state regulatory commissions, NECPUC, the Power Planning Committee of the New England Governors, ISO New England, Inc., and NEPOOL.

Comment Date: 5 p.m. Eastern Time on June 2, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For Assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2694 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–83–000, et al.]

Worthington Generation, LLC, et al.; Electric Rate and Corporate Filings

May 20, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Worthington Generation, LLC

[Docket No. EC05–83–000]

Take notice that on May 18, 2005, Worthington Generation, LLC (Worthington) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Worthington, a wholly owned subsidiary of Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), proposes to transfer title to certain generator step-up transformers to Hoosier without consideration.

Comment Date: June 8, 2005.

2. Deer Park Energy Center Limited Partnership

[Docket No. EG05–55–000]

Take notice that on May 2, 2005, Deer Park Energy Center Limited Partnership (Applicant) filed with the Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that copies of the amendment were served upon the U.S. Securities and Exchange Commission and Public Utility Commission of Texas.

Comment Date: 5 p.m. June 3, 2005.

3. Pacific Gas & Electric Company

[Docket No. ER03–198–003]

Take notice that on May 16, 2005, Pacific Gas & Electric Company (PG&E) submitted notification of a change in status due to Pacific Gas & Electric's recent execution (and receipt of regulatory and bankruptcy court approval) of a power purchase contract (the Second Wraparound Agreement) with Mirant Corporation and its affiliates.

Comment Date: 5 p.m. June 6, 2005.

4. Bellows Falls Power Company, LLC

[Docket No. EG05–57–00]

Take notice that on May 19, 2005, Bellows Falls Power Company, LLC (BFPC or Applicant) filed an amendment to its April 4, 2005, application for a determination of exempt wholesale generator status pursuant to section 365.5 of the Commission's regulations, 18 CFR 365.5 (2004).

BFPC is a Delaware limited liability company that will lease and operate the Bellows Falls Hydroelectric Project from the Town of Rockingham, Vermont.

Comment Date: 5 p.m. June 10, 2005.

5. Midwest Independent Transmission System Operator, Inc., Public Utilities With Grandfathered Agreements in the Midwest ISO Region

[Docket Nos. ER04–691–039, ER04–106–009, and EL04–104–037]

Take notice that on May 16, 2005, the Midwest Independent Transmission system Operator, Inc. (Midwest ISO) submitted revisions to its open access transmission and energy tariff pursuant the Commission's order issued April 15, 2005.[1] The Midwest ISO requests an effective date of April 1, 2005.

The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Tariff Customers, Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, the Midwest ISO also states that the filing has been posted electronically on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. June 6, 2005.

[1] *Midwest Independent Transmission System Operator, Inc., et al.*, 111 FERC ¶ 61,042 (2005).

6. Midwest Independent Transmission System Operator, Inc. Public Utilities With Grandfathered Agreements In the Midwest ISO Region

[Docket No. ER04–691–040 and EL04–104–038]

Take notice that on May 16, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an informational filing in compliance with the Commission's March 16, 2005, order in this proceeding, *Midwest Independent Transmission System Operator, Inc.,* 110 FERC ¶ 61,289 (2005).

The Midwest ISO states that it has served a copy of this filing electronically, including attachments, upon all Tariff Customers under the Energy Markets Tariff, Midwest ISO members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the Region. In addition, the Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: 5 p.m. June 6, 2005.

7. Midwest Independent Transmission System Operator, Inc., Public Utilities With Grandfathered Agreements in the Midwest ISO Region Mid-Continent Area Power Pool

[Docket Nos. ER04–691–041, EL04–104–039, and ER04–960–005]

Take notice that on May 16, 2005, the Midwest Independent Transmission system Operator, Inc. (Midwest ISO) and Mid-Continent Area Power Pool (MAPP) (jointly, the Parties), submitted for filing a revised seams operating agreement between The Midwest Independent Transmission System Operator, Inc. and MAPPCOR. The Parties request an effective date of March 1, 2005.

The Parties state that it has served a copy of this filing electronically, including attachments, upon all Tariff Customers under the EMT, Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all State commissions within the region. In addition, the Parties state that the filing has been posted electronically on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Parties also state that the copies of this filing were also served upon all MAPP members, and each state electric utility regulatory commission in the MAPP region.

Comment date: 5 p.m. on June 6, 2005.

8. American Electric Power Service Corporation

[Docket Nos. ER05–31–003 and EL05–70–003]

Take notice that on May 10, 2005, American Electric Power Service Corporation, (AEPSC) on behalf of the AEP operating companies in its East Zone, (namely Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company), submitted a compliance filing pursuant to the Commission's order issued March 9, 2005, in Docket Nos. ER05–31–000, ER05–31–001 and EL05–70–000, 110 FERC ¶ 61,276 (2005).

AEPSC states that copies of the filing were served on all parties on the official service lists in these proceedings.

Comment Date: 5 p.m. May 31, 2005.

9. PJM Interconnection, L.L.C.

[Docket No. ER05–697–001]

Take notice that on May 13, 2005, PJM Interconnection, L.L.C. (PJM), pursuant to the Commission's deficiency letter issued April 28, 2005, submitted an amendment to its March 11, 2005, filing of revisions to Schedule 2 of the PJM Open Access Transmission Tariff.

PJM states that copies of this filing have been served on all parties on the service list compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. June 3, 2005.

Standard Paragraph

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling line to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For Assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2695 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Change in Land Rights and Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

May 19, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Change in land rights and non-project use of project lands.

b. *Project No.:* 2221–034.

c. *Date Filed:* July 7, 2004 and supplemented on May 12, 2005.

d. *Applicant:* Empire District Electric Company.

e. *Name of Project:* Ozark Beach Hydroelectric Project.

f. *Location:* The project is located on the White River in Taney County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r), 799 and 801.

h. *Applicant Contact:* Mr. David Gibson, 602 Joplin Street; P.O. Box 127; Joplin, MO 64802; (417) 625–5100.

i. *FERC Contact:* Any questions on this notice should be addressed to Isis Johnson at (202) 502–6346, or by e-mail: *Isis.Johnson@ferc.gov*.

j. *Deadline for filing comments and or motions:* June 10, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426. Please include the project number (P–2221–034) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Empire District Electric Company, licensee for the Ozark Beach Hydroelectric Project, has requested Commission approval to lease approximately 10 acres of project lands to The City of Branson, Missouri (City) for commercial and retail development. The property will be leased in three separate parcels. The first parcel is 9.37 acres and located south of Roark Creek. This area presently includes a parking lot, public park and streets, and will remain the same with the exception that 3.5 acres of green space, tennis courts, and a pavilion will be converted into a parking lot. The second parcel is 0.43 acres of green space, tennis courts and parking lot that will be converted to a building site for retail merchants. The last parcel is a 0.59 acre strip of green space that runs perpendicular to Lake Taneycomo and will be used for merchant building sites, streets and parking.

l. *Location of the Application:* 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2701 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL05–7–000]

Capacity Markets in the PJM Region; Notice of Technical Conference

May 19, 2005.

A technical conference will be held June 16, 2005, to discuss the capacity market construct currently in use in the PJM Interconnection, L.L.C. (PJM) region. The technical conference is intended to provide a forum through which Federal and State regulators and participants in the PJM market may come to a common understanding of the current PJM capacity situation, the problems perceived in the market and what deficiencies, if any, exist in the current PJM market construct that contribute to, or do not properly address, those perceived problems, and potential alternative solutions.

The conference will be held from 9 a.m. to 5 p.m. (e.d.t.) in the meeting room of the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426. Members of the Federal Energy Regulatory Commission, state public utilities commissions and their respective staffs are expected to participate. The Commission will issue a supplemental notice with the detailed agenda prior to the conference.

The conference is open for the public to attend. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to accessibility@ferc.gov or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Morris Margolis at (202) 502–8611; *morris.margolis@ferc.gov*, or Sarah McKinley at (202) 502–8004; *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–2703 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

May 19, 2005.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited:		
1. ER03–563–000	5–4–05	Mary H. Smith.
2. Project No. 2210–000	4–27–05	Tom Merriman.
Exempt:		
1. CP02–378–002	4–7–05	Hon. Gerald Theunissen.
		Hon. Mickey Frith.
		Hon. Elcie Guillory.
		Hon. Chuck Kleckley.
		Hon. Willie Mount.
		Hon. Brett Geymann.
		Hon. Ronnie Johns.
		Hon. Dan Morrish.
2. CP04–386–000	5–3–05	Hon. Kay Bailey Hutchison.
3. Project No. 620–009	5–6–05	Gregory S. Risdahl.
4. Project No. 2150–033	5–6–05	Steve Hocking.
5. Project No. 2150–033	5–9–05	Steve Hocking.
6 Project No. 2210–090	4–25–05	Hon. Virgil H. Goode, Jr.
7. Project No. 2671–000	4–27–05	Hon. Susan M. Collins.
8. Project No. 7528–004	4–28–05	Anthony Tur.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2698 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL04–3–000]

Natural Gas Interchangeability; Notice Seeking Comments

May 19, 2005.

On May 17, 2005, the Commission held a technical conference on the above-captioned docket to receive further comments on the Natural Gas Council's reports: *White Paper on Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure and White Paper on Natural Gas Interchangeability and Non-Combustion End Use.* At the conclusion of the technical conference, Chairman Pat Wood announced that the Commission would entertain further comment on the white papers for twenty-one days. The NGC white papers are accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and are available for review in the Commission's Public Reference Room in Washington, DC. The Commission will use the reports and comments received to inform its decisions as to how it should address issues of natural gas quality and natural gas interchangeability.

Chairman Wood further stated that the Commission would also entertain comment on a petition for rulemaking filed by the Natural Gas Supply Association (NGSA) in the captioned docket. Comments on the NGSA petition for rulemaking also will be accepted for twenty-one days.

Comments requested by this Notice should be filed no later than twenty-one days from the date of this Notice, as indicated by the comment date below. The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of their comments to the Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Note that also there is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: June 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2702 Filed 5–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Construction and Operation of the Proposed Big Stone II Power Plant and Transmission Project, South Dakota and Minnesota

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent.

SUMMARY: The Western Area Power Administration (Western), U.S. Department of Energy (DOE) intends to prepare an Environmental Impact Statement (EIS) for the construction and operation of the proposed Big Stone II Power Plant and Transmission Project (Project) in South Dakota and Minnesota. The Rural Utilities Service, U.S. Department of Agriculture (RUS), will participate as a cooperating agency. Missouri River Energy Services (MRES, Applicant), on behalf of the Big Stone II Project co-owners, has applied to interconnect the proposed Project to Western's power transmission system. The EIS will address the construction and operation of the proposed Project, which includes a nominal 600 megawatt (MW) (net) coal-fired power plant and ancillary equipment and facilities in eastern South Dakota, upgrades of existing transmission lines and facilities, and up to 129 miles of new transmission lines in South Dakota and Minnesota. Western will hold a 60-day scoping period and scoping meetings near the Project area to receive input on the scope of the EIS.

DATES: Open-house public scoping meetings will be held June 14–16, 2005, between 5 and 8 p.m. Written comments on the scope of the EIS must be received by 11:59 p.m., July 26, 2005 which marks the end of the EIS scoping period.

ADDRESSES: The open-house public scoping meetings will be held in South Dakota and Minnesota. The June 14, 2005, meeting will be held at the Lantern Inn, 1010 S. Dakota Street in Milbank, South Dakota. On June 15, 2005, the meeting will be held at the Best Western Prairie Inn, 200 E. Highway 28 in Morris, Minnesota. The June 16, 2005, meeting will be held at the Kilowatt Community Center, 600 Kilowatt Drive in Granite Falls, Minnesota. Written comments regarding the scoping process should be addressed to NEPA Document Manager, Big Stone II EIS, A7400, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (800) 336–7288, fax (720) 962–7263 or 7269, e-mail *BigStoneEIS@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: NEPA Document Manager, Big Stone II EIS, A7400, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (800) 336–7288, fax (720) 962–7263 or 7269, e-mail *BigStoneEIS@wapa.gov*. For general information on DOE's National Environmental Policy Act (NEPA) review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western intends to prepare an EIS on the proposal by the Project co-owners to construct and operate the Project in eastern South Dakota and western Minnesota. The Project co-owners include:

- Otter Tail Corporation dba Otter Tail Power Company, lead developer, Fergus Falls, Minnesota
- Missouri River Energy Services, applicant, Sioux Falls, South Dakota
- Central Minnesota Municipal Power Agency, Blue Earth, Minnesota
- Great River Energy, Elk River, Minnesota
- Heartland Consumers Power District, Madison, South Dakota
- Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., Bismarck, North Dakota
- Southern Minnesota Municipal Power Agency, Rochester, Minnesota

The EIS will address the construction and operation of the proposed Project, which includes a nominal 600 MW (net) coal-fired power plant and ancillary equipment and facilities in eastern South Dakota, upgrades of existing transmission lines and facilities, and up to 129 miles of new transmission lines in South Dakota and Minnesota. In addition to the proposed action, the no-action alternative, and any action alternatives defined as a result of the EIS scoping process will also be addressed in the EIS. The EIS process will comply with NEPA (42 U.S.C. 4321–4347, as amended), Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508), and DOE NEPA implementing procedures (10 CFR part 1021).

MRES has applied to interconnect the proposed Project to Western's power transmission system. Western is a power marketing agency of DOE that markets Federal electric power to municipalities, public utilities, and Native American tribes. Western offers capacity on its transmission system to deliver electricity when such capacity is available, under Western's Open Access Transmission Service Tariff (63 FR 5376). The Tariff has been approved by the Federal Energy Regulatory Commission (Commission) as meeting or exceeding the requirements of the Commission's Final Order Nos. 888, 888A, 888B and 888C, which are intended to ensure non-discriminatory transmission system access. Pursuant to the Commission's Order Nos. 2003, 2003–A and 2003–B, Western submitted revisions to its non-jurisdictional Tariff on January 25, 2005, to the Commission. The purpose of the filing was to revise certain terms of Western's original Tariff and to incorporate the Large Generator Interconnection Procedures, and a Large Generator Interconnection Agreement. Western needs to grant or deny MRES's interconnection request under the provisions of its revised Tariff.

Seven co-owners are proposing to construct a second electric generating unit, named Big Stone II, on an industrial site adjacent to the existing Big Stone Plant (unit 1) located in Grant County east of Milbank and northwest of Big Stone City, South Dakota. On-site construction is proposed to begin in the spring of 2007, with proposed commercial operation in 2011. The Project would serve the co-owners' customer base loads.

The existing Big Stone Plant is located on an approximately 2,200-acre site. Otter Tail Power Company owns a 295-acre parcel adjacent to the existing site and has under option to purchase, on behalf of the Project, an additional 625 acres. Based on preliminary project engineering, the Project co-owners have legal access to all plant site property that is necessary to complete Big Stone II construction. A portion of the existing Big Stone Plant site is leased to the Northern Lights Ethanol Plant and provides steam and process water to that facility.

Constructing Big Stone II at the site of an existing facility would considerably reduce the construction costs of a new plant. The proposed plant would share existing infrastructure, including cooling water intake structure, pumping system, and delivery line; plant road and rail spur; coal unloading facilities; and solid waste disposal facilities. The existing plant road and rail spur would provide site access. No changes are expected to these existing features to accommodate the Project.

The Project co-owners would construct a nominal 600 MW (net) electric generating station using a single pulverized coal fired steam generator (boiler) with balanced-draft combustion and a single reheat steam turbine. The plant would be designed to burn approximately 2.5 to 3 million tons of Powder River Basin sub-bituminous coal annually. This fuel is relatively high-moisture, low-sulfur coal with excellent combustion but low grindability qualities. Big Stone II would be designed to normally operate at its maximum continuous rating output. The Project would serve the co-owners' customer base loads.

Subject to a final design and regulatory approval, emissions control equipment would likely include selective catalytic reduction for nitrogen oxide reduction, a fabric filter (baghouse) for particulate collection, followed by a wet scrubber for sulfur dioxide removal. The proposed emission control technologies are configured to provide the greatest mercury emission reductions.

Treated cooling water for the water-cooled surface condenser at the proposed plant would be provided from a closed-loop circulating water system that includes a new mechanical draft cooling tower and circulating water pumps. Raw water for the cooling system would be supplied from the existing Big Stone Plant cooling pond. The water for the cooling pond would be supplied from Big Stone Lake via an existing water line and intake structure. Potable water for drinking fountains, washrooms, showers, and toilet facilities would be supplied from the area's rural water system.

The design of the wastewater treatment system for Big Stone II would maintain the ''zero discharge'' design of the existing Big Stone Plant. Design features would include containment areas around equipment, oil/water separator, brine concentrator, and on-site storm water collection system. In addition, oil collected from the oil/water separator and other plant-generated waste oils would be burned in one of the two coal-fired boilers for energy recovery. Sanitary waste from showers, wash basins, and toilets would be collected for treatment in the existing Big Stone Plant treatment system.

The Project co-owners intend to market ash as a commodity suitable for use in a number of applications including replacement of Portland cement in concrete, soil stabilization, and structural fill. Excess ash, and ash not meeting marketable specifications, would be disposed of in the existing Big Stone Plant on-site ash landfill. The existing Big Stone Plant and the proposed Big Stone II would produce approximately 300,000 to 350,000 cubic yards of ash annually, based on expected average coal characteristics. Operating both units until 2040 could require development of approximately 95 acres of new landfill.

Electric output from the proposed Big Stone II would be stepped up to 230 kilovolts (kV) and interconnected to the transmission system at the existing Big Stone Plant site. The existing plant site currently has four transmission outlets. Two of these outlets are operated at 230 kV, one terminates north of the existing plant site near Hankinson, North Dakota, and the other terminates south of the existing plant site near Blair, South Dakota. The other two transmission outlets are operated at 115 kV; one terminates north of Big Stone City on the Graceville-Morris 115-kV line, and the other terminates at Western's Granite Falls Substation in Minnesota.

The Midwest Independent System Operator (MISO) conducted an Interconnection Study for the Project (MISO project number G392, queue number 38020–01) that outlines required upgrades for interconnecting the proposed Big Stone II to the current interstate transmission system. The study proposed two different interconnection alternatives to meet the steady-state system requirements:

A. Alternative A would include approximately 56 miles of new transmission line and approximately 80 miles of line upgrades: A new 230-kV line from the existing Big Stone Plant site to Ortonville, Minnesota (about seven miles) with an upgrade of the Ortonville to Johnson Junction to Morris, Minnesota line (about 41 miles) from 115 kV to 230 kV, and a new 230-kV line from the existing Big Stone Plant site to Canby, Minnesota (about 49 miles) with an upgrade of the Canby to Granite Falls, Minnesota line (about 39 miles) from 115 kV to 230 kV. The lines would interconnect at Western's Morris and Granite Falls substations, and modifications to these substations would be required.

B. Alternative B would include approximately 129 miles of new transmission line and approximately 39 miles of line upgrades: a new 230-kV line from the existing Big Stone Plant site to just east of Spicer, Minnesota (about 80 miles), and a new 230-kV line from the existing Big Stone Plant site to Canby (about 49 miles) with an upgrade of the Canby to Granite Falls, Minnesota line from 115 kV to 230 kV (about 39 miles). Western is the owner of the Granite Falls Substation where the latter line would interconnect. Modifications to the Granite Falls Substation and a new substation at Spicer would be required.

Under the current MISO tariff and Western interconnection requirements, further analysis is required before firm transmission service can be granted for the Project. This analysis will be performed through a System Impact (or ''Delivery Service'') Study. The results of this study and other regional planning may also identify additional transmission system improvements or other design criteria needed to accommodate the reliable delivery of the electric output from the Project to the co-owners' systems. These additional improvements would be analyzed for environmental impacts. Any necessary transmission line construction would be owned and maintained by one or more of the Project co-owners.

The states of Minnesota and South Dakota require the project co-owners to meet certain requirements for siting private transmission lines within their states. In Minnesota, a Certificate of Need from the Public Utilities Commission and a Route Permit for a Large High-Voltage Transmission Line from the Environmental Quality Board for the portion of the transmission lines located in Minnesota would be required. In South Dakota, a Transmission Facility Route Permit for the portion of the transmission lines in South Dakota would be required.

Interconnection of the proposed Big Stone II Project would incorporate a major new generation resource into Western's power transmission system, including upgrades to existing substations and construction of new transmission lines. Therefore, Western has determined that an EIS is required under DOE NEPA Implementing Procedures, 10 CFR part 1021, Subpart D, Appendix D, class of action D6. Western will be the lead Federal agency for preparing the EIS, as defined at 40 CFR 1501.5. In addition, Great River Energy anticipates applying for a loan from the RUS to finance its portion of the proposed Project, so RUS has been

designated a cooperating agency. Western will invite other Federal, state, local, and tribal agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies on the EIS, as defined at 40 CFR 1501.6. Such agencies may also make a request to Western to be a cooperating agency. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR 1501.6 (b).

Full public participation and disclosure are planned for the entire EIS process. Western anticipates the EIS process will take about 15 months, and will include the open-house public scoping meetings; consultation and involvement with appropriate Federal, state, local, and tribal governmental agencies; public review and hearings on the published draft EIS; a review period; a published final EIS; and publication of a record of decision expected in mid-summer 2006. Additional informal public meetings may be held in the proposed Project area if public interest and issues indicate a need. Western will also mail newsletters to the proposed Project mailing list to communicate Project status and developments.

Western will hold a 60-day scoping period to ensure that interested members of the public and representatives of groups, and Federal, state, local, and tribal agencies have an opportunity to provide input on the scope of the process and the alternatives that will be addressed in the EIS. Western will also hold public open-house scoping meetings near the Project area during the scoping period. The purpose of the scoping meetings will be to provide information about the proposed Project, answer questions, and take written comments from interested parties.

The open-house public scoping meetings will be held on June 14, 2005, at the Lantern Inn, 1010 S. Dakota Street, Milbank, South Dakota; on June 15, 2005, at the Best Western Prairie Inn, 200 E. Highway 28, Morris, Minnesota; and on June 16, 2005, at the Kilowatt Community Center, 600 Kilowatt Drive, Granite Falls, Minnesota. Members of the public and representatives of groups, Federal, state, local and tribal agencies are invited to attend anytime between 5 and 8 p.m. Attendees at the scoping meetings will have the opportunity to view proposed Project and NEPA process displays and other information. The open-house scoping meetings will be informal, with Western and Project representatives available for one-on-one discussions with attendees. Written comments regarding the scoping process may be left with one of Western's representatives at the scoping meetings, or may be provided by fax, e-mail or U.S. Postal Service mail to Western as noted above.

R. Jack Dodd,

Assistant Administrator for Washington Liaison.

[FR Doc. 05–10662 Filed 5–26–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6663–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050052, ERP No. D–FHW–F40429–WI, US–131 Improvement Study, from the Indiana Toll Road (1–80/90) to a Point One Mile North of Cowling Road, U.S. Army COE Section 404 Permit, St. Joseph County, MI and Elkhart County, IN.

Summary: EPA has environmental objections to two alternatives under consideration (Alternatives PA–3 and PA–4) because of direct and indirect impacts to high quality wetlands, impacts to trout habitat in the St. Joseph River, wildlife corridor impacts for the White Pigeon, St. Joseph, and Rocky Rivers, and migratory bird impacts.

Rating EO2.

EIS No. 20050095, ERP No. D–FTA–K54030–CA, Warm Springs Extension, Proposing 5.4 mile Extension of the BART System in the City of Fremont, Funding, San Francisco Bay Area Rapid Transit District, Alameda County, CA.

Summary: While EPA has no objection to the proposed action, but requested clarification on mitigation for noise and aquatic resource impacts.

Rating LO.

EIS No. 20050099, ERP No. D–AFS–L65478–OR, Big Butte Springs Timber Sales, To Implementation Management Direction, Roque River-Siskiyou National Forest, Butte Falls Ranger District, Cascade Zone, Jackson County, OR.

Summary: EPA has environmental concerns about potential adverse impacts to water quality and natural resources.

Rating EC1.

EIS No. 20050119, ERP No. D–AFS–L65479–OR, Timberline Express Project, To Improve the Winter Recreational Opportunities, Implementation, Zigzag Ranger District, Mt. Hood National Forest, Clackamas County, OR.

Summary: EPA has environmental concerns about water resources, habitat fragmentation, and whether infrastructure constraints will accommodate the proposed ski expansion.

Rating EC1.

Final EISs

EIS No. 20050098, ERP No. F–FAA–D51050–PA, Philadelphia International Airport, Runway 17–35 Extension Project, Construction and Operation, US Army COE Section 404 Permit, NPDES Permit, Delaware and Philadelphia Counties, PA.

Summary: EPA's previous issues have been resolved, therefore, EPA has no objection to that action as proposed.

EIS No. 20050150, ERP No. F–NAS–A12042–00, PROGRAMMATIC—Mars Exploration Program (MEP) Implementation.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050159, ERP No. F–NIH–D81035–MD, National Institutes of Health (NIH) Master Plan 2003 Update, National Institutes of Health Main Campus—Bethesda, MD, Montgomery County, MD.

Summary: The FEIS adequately addressed EPA's comments.

Dated: May 24, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–10675 Filed 5–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6663–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202)

564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 05/16/2005 Through 05/20/2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050200, Draft EIS, AFS, CA, Creeks Forest Health Recovery Project, To Develop a Network of Defensible Fuel Profile Zones (DFPZs), Group-Selection Timber Harvest, Individual Tree Selection, Lassen National Forest, Almanor Ranger District, Plumas County, CA, *Comment Period Ends:* 07/11/2005, *Contact:* Robin Bryant (530) 258–2141.

EIS No. 20050201, Final EIS, AFS, NM, San Diego Range Allotment Project, Proposes To Revise Grazing Program, Santa Fe National Forest, Jemez Ranger District, Township 17–19 North, Range 1–3 East, Sandoval County, NM, *Wait Period Ends:* 06/27/2005, *Contact:* Derek Padilla (505) 829–3535.

EIS No. 20050202, Draft EIS, CGD, 00, Programmatic—Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, To Increase the Oil Removal Capability, U.S. Exclusive Economic Zone (EEZ), United States, Alaska, Guam, Puerto Rico and other U.S. Territories, *Comment Period Ends:* 07/11/2005, *Contact:* Brad McKitrick (202) 267–0995.

EIS No. 20050203, Draft EIS, NPS, WA, Mountain Lake Fisheries Management Plan for the North Cascades National Service Complex, Implementation, North Cascades National Park, Whatcom, Skagit and Chelan Counties, WA, *Comment Period Ends:* 08/26/2005, *Contact:* Roy Zipp (360) 873–4590. Ext. 31.

EIS No. 20050204, Final EIS, FRC, MA, Weaver's Cove Liquefied Natural Gas (LNG) Project, Construct and Operate Onshore Liquefied Natural Gas Import and Interstate Natural Gas Transmission Facilities, Falls River, Bristol County, MA, *Wait Period Ends:* 06/27/2005, *Contact:* Roberta Coulter (202) 502–8584.

EIS No. 20050205, Final EIS, FRC, RI, KeySpan Liquefied Natural Gas (LNG) Facility Upgrade Project, Construction and Operation, and Algonquin Gas Transmission Project, Proposal for Site, Construct and Operate a New Natural Gas Pipeline, Coast Guard Permit, U.S. Army COE Section 10 and 404 Permits, Providence County, RI and New England, *Wait Period Ends:* 06/27/2005, *Contact:* Thomas Russo 1–866–20–3372.

Amended Notices

EIS No. 20050077, Draft EIS, AFS, AR, Ozark-St. Francis National Forests Proposed Revised Land and Resource Management Plan, Implementation, Several Counties, AR, *Comment Period Ends:* 06/27/2005, *Contact:* Cary Frost (479) 964–7507. Revision of FR Notice Published on 02/25/2005: CEQ Comment Period Ending 05/26/2005 has been extended to 06/27/2005.

EIS No. 20050114, Draft EIS, AFS, IN, Hoosier National Forest Land and Resource Management Plan, Implementation, Brown, Crawford, Dubois, Jackson, Lawrence, Martin, Monroe, Orange, Perry Counties, IN, *Comment Period Ends:* 06/27/2005, *Contact:* JEDI Perez (812) 275–5987. Revision of FR Notice Published on 03/25/2005: CEQ Comment Period Ending 06/23/2005 has been extended to 06/27/2005.

EIS No. 20050127, Draft EIS, AFS, MI, Hathaway National Forest, Proposed Land and Resource Management Plan, Forest Plan Revision, Implementation, Alder, Sheboygan, Chippewa, Delta, Luce and Mackinac Counties, MI, *Comment Period Ends:* 06/27/2005, *Contact:* Dave Maercklein (906) 786–4062. Revision of FR Notice Published on 03/25/2005: CEQ Comment Period Ending 06/23/2005 has been extended to 06/27/2005.

EIS No. 20050139, Draft EIS, COE, AR, Arkansas River Navigation Study, To Maintain and Improve the Navigation Channel in Order To Enhance Commercial Navigation on the McCellan Kerr Arkansas River Navigation System (MKARNS), Several Counties, AR and Several Counties, OK, *Comment Period Ends:* 06/23/2005, *Contact:* Renee Wright (501) 324–6139. Revision of FR Notice Published on 04/08/2005: CEQ Comment Period Ending on 05/24/2005 has been extended to 06/23/2005.

EIS No. 20050145, Final EIS, FHW, MO, I–64/US 40 Corridor, Reconstruction of the Existing 1–64/US 40 Facility with New Interchange Configurations and Roadway, Funding, City of St. Louis, St. Louis County, MO, *Wait Period Ends:* 06/20/2005, *Contact:* Don Neumann (573) 636–7104. Revision of FR Notice Published on 4/15/05: Wait Period Ending 05/20/2005 has been extended to 06/20/2005.

Dated: May 24, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–10676 Filed 5–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0102; FRL–7717-7]

FIFRA Scientific Advisory Panel; Notice of Cancellation of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The June 14 – 15, 2005, Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) meeting to consider and review issues related to the carbamate dietary exposure assessment incorporating cholinesterase recovery into CARES-compatible modules has been cancelled. For further information, please notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** or see the **Federal Register** of April 27, 2005 (70 FR 21746) (FRL–7710–7).

FOR FURTHER INFORMATION CONTACT: Joseph E. Bailey, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2045; fax number: (202) 564–8382; e-mail address: *bailey.joseph@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 23, 2005.

Clifford Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–10678 Filed 5–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0262; FRL–7714–9]

Endosulfan; Notice of Receipt of Requests to Voluntarily Cancel Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the endosulfan registrant(s) to voluntarily amend their registrations to terminate use of certain products on succulent beans, succulent beans, spinach, grapes,

and pecans. The requests would not terminate the last endosulfan product(s) registered for use in the U.S. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request(s), or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments, identified by docket ID number OPP–2002–0262, must be received on or before June 27, 2005.

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: Meghan French, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8004; fax number: (703) 308–8005; e-mail address: *french.meghan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0262. 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, 1801 S. Bell St., 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. 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.1. 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 in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute.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–2002–0262. 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–2002–0262. 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–2002–0262.

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, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2002–0262. 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 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 docket ID 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.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from registrants Bayer Crop Science, Makhteshim North America, Fuller Systems, and Drexel Chemicals to amend to terminate uses of 13 endosulfan product registrations. Endosulfan is a broad spectrum contact insecticide used on a variety of foods (vegetables, fruits and some grains) and non-food use crops (cotton and nursery stock).

EPA received requests to amend registrations to terminate uses of pesticide product registrations identified in this notice (Table 1) from Bayer Crop Science, Makhteshim North America, Fuller Systems, and Drexel Chemicals. Specifically, registrants requested the termination of use on succulent beans and peas, grapes, pecans and spinach and will remove these uses from all endosulfan products registered in the United States, or the last pesticide products registered in the United States for these uses.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from Bayer Crop Science, Makhteshim-Agan North America, Fuller System, Inc., and Drexel Chemicals to terminate uses of endosulfan product registrations. The affected products and the registrants making the requests are identified in Table 1 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

In this case, endosulfan registrants requested that EPA waive the 180–day comment period. EPA will therefore provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30–days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.—ENDOSULFAN PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Company
264–637	Thiodan Technical	Bayer Crop Science LP
264–638	Phaser 3EC	Bayer Crop Science LP
264–656	Phaser 50 WP/WSB	Bayer Crop Science LP
264–658	Phaser 3EC	Bayer Crop Science LP
264–659	Phaser 50 WP/WSB	Bayer Crop Science LP
11678–5	Thionex Technical	Makhteshim Chemical Works
11678–25	Thionex 35 EC	Makhteshim Chemical Works
66222–62	Thionex 50W	Makhteshim-Agan NA
66222–63	Thionex 3EC	Makhteshim-Agan NA
66222–64	Thionex Technical	Makhteshim-Agan NA
1327–35	Fulex Thiodan Smoke	Fuller System, Inc.
19713–99	Drexel Endosulfan 2EC	Drexel Chemicals
19713–319	Drexel Endosulfan Technical	Drexel Chemicals
19713–399	Drexel Endosulfan 3EC	Drexel Chemicals

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION OF USES

EPA Company No.	Company name and address
264	Bayer CropScience LP 2 T.W. Alexander Drive Research Triangle Park, North Carolina 27709
11678	Makhteshim Chemical Works 551 Fifth Avenue, Suite 1100 New York, New York 10176
66222	Makhteshim-AGAN of North America 551 Fifth Avenue, Suite 1100 New York, New York 10176
19713	Drexel Chemical Company 1700 Channel Avenue, PO Box 13327 Memphis, Tennessee 38113–0327
1327	Fuller System, Inc. PO Box 3053 Woburn, Massachusetts 01888

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Endosulfan

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before 30 days after date of publication in the **Federal Register**. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary cancellation of uses is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 19, 2005.

Robert McNally,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–10679 Filed 5–26–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0113; FRL–7711–1]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2005–0113, must be received on or before June 27, 2005.

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: Tessa Milofsky, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0455; e-mail address: *milofsky.tessa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture pesticides or apply pesticides to growing crops. Potentially affected entities may include, but are not limited to:

- Crop production
- Animal production
- Food manufacturing
- Pesticide manufacturing

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. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0113. 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, 1801 S. Bell St., 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. 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.1. 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 in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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–2005–0113. 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–2005–0113. 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), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0113.

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, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0113. 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. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. 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. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 81606–E. *Applicant*: Biopreparaty Co. Ltd. Tylisovska 1, Prague 6, Czech Republic. *Product Name*: Polyversum. Fungicide and plant growth stimulant. *Active ingredient*:

Pythium oligandrum DV 74 at 5%. *Proposed classification/Use*: For controlling plant diseases and stimulating SAR in agricultural crops, ornamental plants, and turf grasses.

2. *File Symbol*: 81606–R. *Applicant*: Biopreparaty Co. Ltd. Tylisovska 1, Prague 6, Czech Republic. *Product Name*: Technical DV 74. Fungicide and plant growth stimulant. *Active ingredient*: Pythium oligandrum DV 74 at 1%. *Proposed classification/Use*: Manufacturing use product for formulation into end-use products used to control plant diseases and stimulate SAR in agricultural crops, ornamental plants, and turf grasses.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 16, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–10479 Filed 5–26–05; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0031; FRL–7717–3

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 28, 2005 to May 10, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket identification (ID) number OPPT–2005–0031 and the specific PMN number or TME number, must be received on or before June 27, 2005.

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: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2005–0031. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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.1. 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 in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. 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 and specific PMN number or TME 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 OPPT–2005–0031. 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 *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–[insert e-docket no.] and PMN Number or TME Number. 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: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2005– 0031 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

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 technical 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. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 28, 2005 to May 10, 2005, consists of the PMNs

pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 22 PREMANUFACTURE NOTICES RECEIVED FROM: 04/28/05 TO 05/10/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0523	04/28/05	07/26/05	CBI	(G) Water repellant	(G) Polymeric sulfurized phenolic compound sulfur mixture
P–05–0524	04/29/05	07/27/05	CBI	(G) Latex binder	(G) Vinyl acetate terpolymer
P–05–0525	04/29/05	07/27/05	CBI	(G) Site-limited intermediate	(G) Alkyl amidoamine
P–05–0526	05/02/05	07/30/05	CBI	(G) Open non-dispersive (coatings)	(G) Polyurethane resin
P–05–0527	05/02/05	07/30/05	CBI	(G) Specialty additive	(G) Polymer of formaldehyde and substituted phenols
P–05–0528	05/03/05	07/31/05	Octel Starreon	(G) Fuel additive. Destructive use. PMN chemical is destroyed when fuel is burned.	(G) Polyolefin esters
P–05–0529	05/03/05	07/31/05	Octel Starreon	(G) Fuel additive. Destructive use. PMN chemical is destroyed when fuel is burned.	(G) Polyolefin ester
P–05–0530	05/03/05	07/31/05	Octel Starreon	(G) Fuel additive. Destructive use. PMN chemical is destroyed when fuel is burned.	(G) Polyolefin ester
P–05–0531	05/03/05	07/31/05	Octel Starreon	(G) Fuel additive. Destructive use. PMN chemical is destroyed when fuel is burned.	(G) Polyolefin ester
P–05–0532	05/03/05	07/31/05	Octel Starreon	(G) Fuel additive. Destructive use. PMN chemical is destroyed when fuel is burned.	(G) Polyolefin ester
P–05–0533	05/03/05	07/31/05	CBI	(G) A raw material for electronic materials	(G) Phenol, 2,6-dialkyl-, homopolymer, alkenylarene alkyl ether
P–05–0534	05/04/05	08/01/05	Mayzo, Inc.	(S) Stabilizer and antioxidant for plastics, rubber, adhesives, coatings, and oils	(S) Benzenepropanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-, isotridecyl ester
P–05–0535	05/04/05	08/01/05	CBI	(G) Chemical intermediate	(G) Arylsulfonate salt
P–05–0536	05/04/05	08/01/05	CBI	(G) Chemical intermediate	(G) Substituted alkylsulfonate salt
P–05–0537	05/04/05	08/01/05	CBI	(G) Chemical intermediate	(G) Quaternary ammonium bromide
P–05–0538	05/05/05	08/02/05	CBI	(G) Inks and coatings	(G) Acrylic oligomer
P–05–0539	05/05/05	08/02/05	CBI	(S) Epoxy curing agent for crosslinking and use in other coatings	(S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-(3-aminopropyl)-.omega.-(3-aminopropoxy)-
P–05–0540	05/05/05	08/02/05	CBI	(S) Site limited intermediate to manufacture ts sk0501	(S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-(2-cyanoethyl)-.omega.-(2-cyanoethoxy)-
P–05–0541	05/06/05	08/03/05	CBI	(G) Open non-dispersive (binder)	(G) Aliphatic polyurethane resin
P–05–0542	05/06/05	08/03/05	CBI	(G) Resin coating	(G) Alkanedioic acid, polymer with 1,3-diisocyanatomethylbenzene, 2,2-dimethyl-1,3-propanediol, 3-hydroxy-2-(hydroxymethyl)- 2-methylpropanoic acid and 2,2′-[(1-methylethylidene)bis(4,1-phenyleneoxy)] bis[ethanol], 2-ethyl-2-[[2-(hydroxymethyl)-2-[[(1-oxo-2-propenyl)oxy]methyl] butoxy]methyl]-1 ,3-propanediyl diacrylate blocked, compounds with triethylamine
P–05–0543	05/09/05	08/06/05	CBI	(G) Machine seals, wheels and rollers	(G) Aromatic diisocyanate based polyurethane polymer
P–05–0544	05/10/05	08/07/05	CBI	(G) Raw material ingredient	(S) Benzenepentanal, .alpha.-methyl-

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 12 NOTICES OF COMMENCEMENT FROM: 04/28/05 TO 05/10/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–1013	05/02/05	03/25/05	(G) Alkylborane complex
P–03–0604	05/09/05	04/21/05	(G) Fluorinated methacrylated monomer
P–03–0706	05/06/05	04/06/05	(G) Alkylcarboxyalkenyl dihydroxyalkylate, polymer with carboxyalkenyl and alkylalkenyl sodium sulfonate, calcium salt
P–03–0753	05/06/05	04/29/05	(S) 6-nonen-1-ol, acetate, (6z)-
P–04–0122	05/03/05	04/05/05	(G) Mdi/carbonate prepolymer
P–04–0316	05/04/05	04/18/05	(G) Polyisobutenylsuccinic acid, metal salt
P–04–0586	04/28/05	04/08/05	(G) Mdi based polyurethane polymer
P–04–0908	04/28/05	04/05/05	(G) Polyolefin esters
P–05–0054	05/03/05	04/14/05	(G) Neodecanoic acid, 1,6-hexanediylbis[imino(2-hydroxy-3,1-propanediyl)] ester, polymer with (chloromethyl)oxirane, alkyldiamine, 4,4′-(1-methylethylidene)bis[phenol] and 2,2′-[(1-methylethylidene)bis (4,1-phenyleneoxymethylene)]bis [oxirane], reaction products with diethanolamine, acetates (salts) formates (salts)
P–05–0192	05/04/05	03/29/05	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate, ethenylbenzene, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[(2-methyl-1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl) and 2-propenamide
P–05–0236	05/09/05	04/29/05	(G) Aromatic-modified aliphatic hydrocarbon resin
P–05–0244	05/09/05	04/29/05	(G) Substituted cycloalkenone

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: May 18, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–10478 Filed 5–26–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor Management Cooperation Program; Correction on Application Submission Deadline

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice; correction.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) published a document in the **Federal Register** on April 13, 2005, concerning the Application Solicitation for the Labor Management Cooperation Program. The document contained an inadvertent omission of the date upon which applications would be accepted and also changes the term ''Director, Labor-Management Grants Program'' to the ''Director or their designee''.

FOR FURTHER INFORMATION CONTACT: Maria A Fried, Federal Register Liaison at 202–606–8090.

Correction

In the **Federal Register** of April 13, 2005, page 19472, correct the **SUMMARY** section to read:

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 2005 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This solicitation contains a change in the application process in an effort to maximize participation under current budget constraints. In the past, applicants were required to submit applications by a fixed date. In Fiscal Year 2005, the date for application submission will be open, contingent upon fund availability. Applications will be accepted for consideration after May 15, 2005 and continued to do so until July 31, 2006, or until all FY 2005 grant funds are obligated, with awards being made by September 30, 2006.

Correction

In the **Federal Register** of April 13, 2005, page 19472, correct Section G. Application Submission and Review Process to read:

G. Application Submission and Review Process

The Application for Federal Assistance (SF–24) form must be signed by both a labor and management representative. In lieu of signing the SF–424 form, representatives may type their name, title, and organization on plain bond paper with a signature line signed and dated, in accordance with block 18 of the SF–424 form. The individual listed as a contact person in block 6 on the application form will generally be the person with whom FMCS will communicate during the application review process. Please be sure that person is available once the application has been submitted. Additionally, it is the applicant's responsibility to notify FMCS in writing of any changes (*e.g.* if the address or contact person has changed).

We will accept applications beginning May 15, 2005, and continue to do so until July 31, 2006 or until all FY 2005 funds are obligated, with awards being made by September 30, 2006. While proposals may be accepted at anytime between May 15, 2005 and July 31, 2006, proposals received late in the cycle have a greater risk of not being funded due to unavailability of funds. Once your application has been received and acknowledged by FMCS, no applications or supplementary materials will be accepted thereafter. Applicants are highly advised to contact the grants office prior to committing any resources to the preparation of a proposal.

An original application containing numbered pages, plus three copies should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW., Washington, DC

20427. FMCS will not consider videotaped submissions or video attachments to submissions. FMCS will confirm receipt of all applications within 10 days thereof.

All eligible applications will be reviewed and scored preliminarily by one or more Grant Review Boards. The Board(s) will recommend selected applications for rejection or further funding consideration. The Director or their designee, will finalize the scoring and selection process. All FY 2005 grant applications will be notified of results and all grants awards will be made by September 30, 2006. Applications that fail to adhere to eligibility or other major requirements will be administratively rejected.

Dated: May 23, 2005.

Maria A. Fried,

Federal Register Liaison.

[FR Doc. 05–10622 Filed 5–26–05; 8:45 am]

BILLING CODE 6732–01–M

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 20, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Ameribank Holding Company, Collinsville, Oklahoma; to acquire up to 100 percent of the voting shares of Boynton Holding Company, Inc, and thereby indirectly acquire voting shares of Territory Bank, both of Muskogee, Oklahoma.

Board of Governors of the Federal Reserve System, May 23, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–10623 Filed 5–26–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 11 a.m., Friday, June 10, 2005.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to Public:

(1) Oral Argument in the matter of North Texas Specialty Physicians, Docket 9312.

Portion Closed to the Public:

(2) Executive Session to follow Oral Argument in North Texas Speciality Physicians, Docket 9312.

CONTACT PERSON FOR MORE INFORMATION: Mitch Katz, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 05–10779 Filed 5–25–05; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0262]

General Services Administration Acquisition Regulation; Information Collection; Identification of Products with Environmental Attributes

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding identification of products with environmental attributes.

Public comments are particularly invited on: Whether this collection of information is necessary 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; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: July 26, 2005.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Procurement Analyst, Contract Policy Division, at telephone (202) 501–1900 or via email at *linda.nelson@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

General Services Administration (GSA) requires contractors submitting Multiple Award Schedule Contracts to identify in their GSA price lists those products that they market commercially that have environmental attributes. The identification of these products will enable Federal agencies to maximize the use of these products to meet the responsibilities expressed in statutes and executive orders.

B. Annual Reporting Burden

Respondents: 16,941.
Responses Per Respondent: 1.
Annual Responses: 16,941.
Hours Per Response: 5.
Total Burden Hours: 84,705.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F

Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes, in all correspondence.

Dated: May 20, 2005.

Julia Wise,

Director,Contract Policy Division.

[FR Doc. 05–10610 Filed 5–26–05; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0027]

General Services Administration Acquisition Regulation; Information Collection; Contract Administration, Quality Assurance (GSAR Parts 542 and 546; GSA Form 1678, DD Form 250, and GSA Form 308)

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding contract administration, and quality assurance. A request for public comments was published at 70 FR 8589, February 22, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary 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; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Division, at telephone (202) 501–4082 or via e-mail to *jeritta.parnell@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0027, Contract Administration, Quality Assurance (GSAR Parts 542 and 546; GSA Form 1678, DD Form 250, and GSA Form 308), in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under certain contracts, because of reliance on contractor inspection in lieu of Government inspection, GSA's Federal Supply Service (FSS) requires documentation from its contractors to effectively monitor contractor performance and ensure that it will be able to take timely action should that performance be deficient.

B. Annual Reporting Burden

Respondents: 4,604
Total Responses: 116,869
Total Burden Hours: 7,830
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0027, Contract Administration, Quality Assurance (GSAR Parts 542 and 546; GSA Form 1678, DD Form 250, and GSA Form 308), in all correspondence.

Dated: May 20, 2005.

Julia Wise,

Director,Contract Policy Division

[FR Doc. 05–10611 Filed 5–26–05; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Capacity Building Assistance To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Interventions for High-Risk Racial/Ethnic Minority Subpopulations, Program Announcement 05051

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Capacity Building Assistance to Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Interventions for High-Risk Racial/Ethnic Minority Subpopulations, Program Announcement 05051.

Times and Dates: 12 p.m.–5:30 p.m., June 15, 2005 (Closed). 8:30 a.m.–5 p.m., June 16, 2005 (Closed). 8:30 a.m.–5 p.m., June 17, 2005 (Closed).

Place: Westin Hotel at Perimeter North, 7 Concourse Parkway, Atlanta, GA 30328, Telephone Number 770.395.3900.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Capacity Building Assistance to Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Interventions for High-Risk Racial/Ethnic Minority Subpopulations, Program Announcement 05051.

Contact Person for More Information: Beth Wolfe, Designated Federal Official, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 8 Corporate Square Boulevard, Mailstop E07, Atlanta, GA 30329, Telephone (404) 639–8531.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 23, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10644 Filed 5–26–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10158]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden

estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures. The use of normal clearance procedures is reasonably likely to cause a statutory deadline to be missed.

This survey will support the required evaluation of the Medicare Home Health Independence Demonstration mandated under Section 702 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Section 702 of the MMA requires the Secretary to collect data on effects of the demonstration on quality of care, patient outcomes, and any additional costs to Medicare. One year after the project's termination (currently projected to be October, 2006), the Secretary is to submit a report including recommendations to exempt permanently and severely disabled homebound beneficiaries from the traditional homebound restrictions. The purpose of this survey is to develop the information Congress seeks, and to provide CMS with a sound basis for making the mandated recommendations. This survey is designed to study the health and quality of life impacts of changing the eligibility requirement, and to provide descriptive information about the demonstration's target population.

CMS is requesting OMB review and approval of this collection by June 27, 2005, with a 180-day approval period. Written comments and recommendation will be accepted from the public if received by the individuals designated below by June 27, 2005.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by June 27, 2005:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C5–13–27, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262, Attn: William N. Parham, III, CMS–10158; and,

OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 23, 2005.

Michelle Shortt,

Acting Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–10706 Filed 5–25–05; 9:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3144–N]

RIN 0938–ZA49

Medicare Program; Calendar Year 2005 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice solicits interested parties to submit requests for review of the appropriateness of the payment amount for a particular intraocular lens furnished by an ambulatory surgical center.

DATES: Requests for review must be received at the address provided no later than 5 pm E.S.T. on June 27, 2005.

ADDRESSES: Mail requests for review (one original and three copies) to the Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: Michael Lyman, Mailstop C1–09–06, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Michael Lyman, (410) 786–6938.

SUPPLEMENTARY INFORMATION: On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Pub. L. 103–432) were enacted. Section 141(b)(1) of SSAA 1994 required us to develop and implement a process under which interested parties may request a review of the appropriateness of the payment amount for intraocular lenses (IOLs) furnished by ambulatory surgical centers (ASCs) under section 1833(i)(2)(A)(iii) of the Social Security Act (the Act) on the basis that those lenses constitute a class of new technology intraocular lenses (NTIOLs).

On June 16, 1999, we published a final rule in the **Federal Register** entitled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers'' (64 FR 32198) which added subpart F to 42 CFR part 416. The June 16, 1999 final rule established a process for adjusting payment amounts for NTIOLs furnished by ambulatory surgical centers (ASCs); defined the terms relevant to the process; and established an initial flat rate payment adjustment of $50 for IOLs that we determine are NTIOLs. The payment adjustment applies for a 5-year period that begins when we recognize a payment adjustment for the first IOL in a new class of technology, as explained below. Any subsequent IOLs with the same characteristics as the first IOL recognized for a payment adjustment will receive the adjustment for the remainder of the 5-year period established by the first recognized NTIOL. After July 16, 2002, we have the option of changing the $50 adjustment amount through proposed and final rulemaking in connection with ambulatory surgical center services. We have opted not to change the adjustment amount for calendar year 2005 (CY 05).

Review Process for Establishing Classes of New Technology Intraocular Lenses (NTIOLs)

We will classify an IOL as a NTIOL if the lens meets the definition of a ''new

technology IOL'' in 42 CFR 416.180, which incorporates section 141(b)(2) of SSAA 1994. Under that section, a ''new technology IOL'' is defined as ''an IOL that CMS determines has been approved by the Food and Drug Administration (FDA) for use in labeling and advertising the IOL's claims of specific clinical advantages and superiority over existing IOLs with regard to reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.''

We evaluate requests for the designation of an IOL as an NTIOL by doing the following:

(1) Publishing a public notice in the **Federal Register** that identifies the requirements and deadline for submitting a request for a review of the appropriateness of the payment amount for an IOL.

(2) Processing requests to review the appropriateness of the payment amount for an IOL.

(3) Compiling a list of the requests we receive that identify the IOL manufacturer, IOL model number under review, name of the requester, and a summary of the request for review of the appropriateness of the IOL payment amount.

(4) Publishing an annual public notice in the **Federal Register** that lists the requests and provides the public with 30 days to submit comments on the IOLs for which a review was requested.

(5) Reviewing the information submitted with the applicant's request for review, and requesting confirmation from the FDA about labeling applications that have been approved on the IOL model under review. We also request FDA's recommendations as to whether or not the IOL model submitted represents a new class of technology that sets it apart from other IOLs.

(6) Determining which lenses meet the criteria to qualify for the payment adjustment based on clinical data and evidence submitted for review, the FDA's analysis, public comments on the lenses, and other available information. NTIOL applicants should provide good evidence-based studies supporting the claimed clinical benefits. We are interested in receiving data showing functional clinical improvements, as opposed to improvements that have statistical significance without functional clinical significance.

(7) Designating a type of material or a predominant characteristic of an NTIOL that sets it apart from other IOLs to establish a new class.

(8) Publishing a notice in the **Federal Register** (within 90 days after we publish the notice identified in paragraph (4) of this section) that announces the IOLs that we have determined are ''new technology'' IOLs. These NTIOLs qualify for a $50 (or other amount that we may adopt through notice and comment rulemaking) payment adjustment for a 5-year period.

(9) Adjusting payments effective 30 days after the publication of the final notice announcing our determinations described in paragraph (8) of this section.

Who May Request a Review

As specified in § 416.190, any party who is able to furnish the information required in § 416.195 may request that we review the appropriateness of the payment amount provided under § 1833(i)(2)(A)(iii) of the Act for an IOL that, as claimed by the party, meets the definition of a new technology IOL in § 416.180.

Requests To Review

As specified in § 416.195(a), a request to review must include all of the following information:

- The name of the manufacturer, the model number, and the trade name of the IOL.
- A copy of the FDA's summary of the IOL's safety and effectiveness.
- A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.
- A copy of the IOL's original FDA approval notification.
- Reports of modifications made after the original FDA approval.
- Other information that supports the requestor's claim (including clinical trials, case studies, journal articles, etc.).

Privileged or Confidential Information

To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, § 416.195(b) requires that we maintain the confidentiality of the information and protect it from disclosure not otherwise authorized or required by Federal law as allowed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, with respect to trade secrets, the Trade Secrets Act (18 U.S.C. 1905). We recommend that the requestor clearly identify all information that is to be characterized as confidential.

Application of the Payment Adjustment

As provided in § 416.200, we recognize all IOL(s) that meet the definition of a new technology IOL for purposes of subpart F of part 416 as belonging to a class of NTIOLs for a period of 5 years effective from the date that we recognize the first NTIOL in that subset. Any IOL that we subsequently recognize as belonging to a new technology subset receives the new technology payment adjustment for the remainder of the 5-year period established with our recognition of the first NTIOL in the subset. Beginning 5 years after the effective date of our initial recognition of a new technology subset, the payment adjustment ceases for all IOLs that we have designated as belonging to that subset.

I. Provisions of This Notice

Under our rules at 42 CFR part 416, subpart F, we are soliciting requests for review of the appropriateness of the payment amount for IOLs furnished by an ASC. Requests for review must comply with our regulations at § 416.195 and be received at the address provided by the date specified in the **DATES** section of this notice. We will announce timely requests for review in a subsequent notice that will allow for public comment. Currently, if we determine that an intraocular lens meets the definition of a new technology intraocular lens, the lens will be eligible for a payment adjustment of $50.

II. Collection of Information Requirements

Because the requirements referenced in this notice will not affect 10 or more persons on an annual basis, this notice does not impose any information collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

III. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for

major rules with economically significant effects ($100 million or more annually). We have determined that this notice is not a major rule because it merely solicits interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular IOL furnished by an ASC.

The RFA requires agencies to analyze options for small business regulatory relief. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to 29 million or less in any 1 year period. Approximately 83 percent of ASCs generate revenues of $18.5 million or less and are considered small business entities according to the Small Business Administration. Although a substantial number of ASCs may be affected, we do not believe there will be significant economic impact on small businesses for the reason stated above.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice, which affects only ASCs, will have no affect on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. Because this notice only affects ASCs, we have determined that it will not have a consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications. Because this notice merely solicits interested parties to submit requests for review of the appropriateness of the payment amount with regard to a particular IOL furnished by an ASC, we have determined that it does not have an economic impact on State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Sections 1832(a)(2)(F)(i) and 1833(i)(2)(a)(iii) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(A)(iii)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 21, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–10760 Filed 5–26–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4095–N]

Medicare Program; Meeting of the Advisory Panel on Medicare Education, June 21, 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on June 21, 2005. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for June 21, 2005, from 9 a.m. to 3:30 p.m., e.d.t.

Deadline for Presentations and Comments: June 14, 2005, 12 noon, e.d.t.

ADDRESSES: The meeting will be held at the Marriot at Metro Center, 775 12th Street, NW., Washington, DC 20005, (202) 737–2200.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *Lynne.Johnson@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of Health and Human Services (the Secretary) the authority to establish an advisory panel for the purpose of advising the Secretary in connection with any of his functions. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849), and approved the renewal of the charter on January 14, 2005. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Drew E. Altman, President and Chief Executive Officer, Henry J. Kaiser Family Foundation; Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; The Honorable Bobby Jindal, United States Congress; David Knutson, Director, Health System Studies, Park

Nicollet Institute for Research and Education; Dr. David Lansky, Director, Health Program, Markle Foundation; Donald J. Lott, Executive Director, Indian Family Health Clinic; Dr. Frank I. Luntz, President and Chief Executive Officer, Luntz Research Companies; Dr. Daniel Lyons, Senior Vice President, Government Programs, Independence Blue Cross; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Keith Mueller, Professor and Section Head, Health Services Research and Rural Health Policy, University of Nebraska; David Null, Financial Advisor, Merrill Lynch; Lee Partridge, Senior Health Policy Advisor, National Partnership for Women and Families; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Susan O. Raetzman, Associate Director, Public Policy Institute, AARP; Catherine Valenti, Chairperson and Chief Executive Officer, Caring Voice Coalition, and Grant Wedner, Senior Director, New Services Department, WebMD.

The agenda for the June 21, 2005, meeting will include the following:

- Recap of the previous meeting (March 22, 2005).
- Centers for Medicare & Medicaid Services update.
- Medicare Modernization Act: Education and outreach strategies.
- Public comment.
- Listening session with CMS leadership.
- Next steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850 or by e-mail at *Lynne.Johnson@cms.hhs.gov,* no later than 12 noon, e.d.t., June 14, 2005. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, (e.d.t.), June 14, 2005. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 18, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–10569 Filed 5–26–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1293–N]

Medicare Program; Public Meeting in Calendar Year 2005 for New Clinical Laboratory Tests Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to discuss payment determinations for specific new Physicians' Current Procedural Terminology (CPT) codes for clinical laboratory tests. The meeting provides a forum for interested parties to make oral presentations and submit written comments on the new codes that will be included in Medicare's Clinical Laboratory Fee Schedule for calendar year 2006, which will be effective on January 1, 2006. Discussion is directed toward technical issues relating to payment determinations for a specified list of new clinical laboratory codes. The development of the codes for clinical laboratory tests is largely performed by the CPT Editorial Panel and will not be further discussed at the CMS meeting.

DATES: The public meeting is scheduled for Monday, July 18, 2005, from 10 a.m. to 4 p.m., e.d.t.

ADDRESSES: The meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, located at 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Anita Greenberg, (410) 786–4601.

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Pub. L. 106–554, mandated procedures that permit public consultation for payment determinations for new clinical laboratory tests under Part B of title XVIII of the Social Security Act (the Act) in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new clinical laboratory tests are in accordance with the procedures published on November 23, 2001, in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA. Also, section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Pub. L. 108–173, amends section 1833(h)(8)(B)(iii) of the Act to require that we convene a public meeting to receive comments and recommendations (and data on which recommendations are based) for establishing payment amounts for new clinical laboratory tests.

The public meeting is intended to provide expert input on the nature of new clinical laboratory tests and receive recommendations to either cross-walk or gap-fill for payment. Decisions regarding payment for the newly created Physicians' Current Procedural Terminology (CPT) codes will not be made at this meeting. A summary of the new codes and the payment recommendations that are presented during the public meeting will be posted on our website by September 8, 2005 and can be accessed at *http://www.cms.hhs.gov/suppliers/clinlab.* The summary will also display our tentative payment determinations, and interested parties may submit written comments on the tentative payment determinations by September 23, 2005, to the address specified in the summary.

II. Registration

Registration Procedures:

Beginning June 20, 2005, registration may be completed on-line at *http://www.cms.hhs.gov/suppliers/clinlab.* To register by telephone contact Anita Greenberg at (410) 786–4601. The following information must be submitted when registering:

- Name;
- Company name;
- Address;
- Telephone number(s); and
- E-mail address(es).

When registering, individuals who want to make a presentation must also specify which new clinical laboratory test code(s) they will be presenting. A confirmation will be sent upon receipt

of the registration. Individuals may also register by calling Anita Greenberg at (410) 786–4601. *Registration Deadline:* Individuals must register by July 14, 2005.

III. Presentations

This meeting is open to the public. The on-site check-in for visitors will be held from 9:30 a.m. to 10 a.m., followed by opening remarks. Registered persons from the public may discuss and recommend payment determinations for specific new CPT codes for the 2005 Clinical Laboratory Fee Schedule. A newly created CPT code can either represent a refinement or modification of existing test methods, or a substantially new test method. The newly created CPT codes for the calendar year 2005 will be listed at the Web site *http://www.cms.hhs.gov/suppliers/clinlab* on or after June 20, 2005.

Oral presentations must be brief, and must be accompanied by three written copies.

Presenters may also make copies available for approximately 50 meeting participants. Presenters should address the new test code(s) and descriptor, the test purpose and method, costs, charges, and a recommendation with rationale for one of two methods (cross-walking or gap-fill) for determining payment for new clinical laboratory codes.

The first method, called cross-walking, a new test is determined to be similar to an existing test, multiple existing test codes, or a portion of an existing test code. The new test code is then assigned the related existing local fee schedule amounts and resulting national limitation amount. The second method, called gap-filling, is used when no comparable, existing test is available. When using this method, instructions are provided to each Medicare carrier to determine a payment amount for its geographic area(s) for use in the first year, and the carrier-specific amounts are used to establish a national limitation amount for following years. For each new clinical laboratory test code, a determination must be made to either cross-walk or to gap-fill, and, if cross-walking is appropriate, to know what tests to which to cross-walk.

IV. Security, Building, and Parking Guidelines

The meetings are held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring government-issued photo identification and a copy of your written meeting registration confirmation. Persons without proper identification may be denied access.

Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting each day.

Security measures also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Parking permits and instructions are issued upon arrival by the guards at the main entrance.

All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.

V. Special Accommodations

Individuals attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, must provide this information when registering for the meeting.

Authority: Section 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 42 U.S.C. 1395hh).

Dated: May 12, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–10263– 5–26–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 68, No. 34, pp. 8297–8299, dated February 20, 2003) is amended to reflect changes to the organizational structure of CMS. The changes include: (1) Renaming the Public Affairs Office to the Office of External Affairs, (2) restructuring the Center for Beneficiary Choices to implement Titles I and II of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, (3) realigning functions of the Center for Medicaid and State Operations, (4) renaming the Office of Health Insurance Portability and Accountability Acts Standards to the Office of E-Health Standards and Services, and (5) establishing the Office of Acquisition and Grants Management.

The specific amendments to Part F. are described below:

• Section F.10. (Organization) is amended to read as follows:

1. Office of External Affairs (FAC).
2. Center for Beneficiary Choices (FAE).
3. Office of Legislation (FAF).
4. Center for Medicare Management (FAH).
5. Office of Equal Opportunity and Civil Rights (FAJ).
6. Office of Research, Development, and Information (FAK).
7. Office of Clinical Standards and Quality (FAM).
8. Office of the Actuary (FAN).
9. Center for Medicaid and State Operations (FAS).
10. Office of Operations Management (FAY).
11. Office of Information Services (FBB).
12. Office of Financial Management (FBC).
13. Office of Strategic Operations and Regulatory Affairs (FGA).
14. Office of E-Health Standards and Services (FHA).
15. Office of Acquisition and Grants Management (FKA).

• Section F. 20. (Functions) is amended by deleting the functional statements in their entirety for the Public Affairs Office, the Center for Beneficiary Choices, the Office of Health Insurance Portability and Accountability Act Standards, and the Center for Medicaid and State Operations. The new functional statements for the Office of External Affairs, Center for Beneficiary Choices, Center for Medicaid and State Operations, Office of E-Health Standards and Services, and the Office of Acquisition and Grants Management read as follows:

1. Office of External Affairs (FAC)

• Serves as the focal point for the Agency to the news media and provides leadership for the Agency in the area of

intergovernmental affairs. Advises the Administrator and other Agency components in all activities related to the media and on matters that affect other units and levels of government.

• Coordinates CMS activities with the Office of the Assistant Secretary for Public Affairs and the Secretary's intergovernmental affairs officials.

• Serves as senior counsel to the Administrator in all activities related to the media. Provides consultation, advice, and training to the Agency's senior staff with respect to relations with the news media.

• Develops and executes strategies to further the Agency's relationship and dealings with the media. Maintains a broad based knowledge of the Agency's structure, responsibilities, mission, goals, programs, and initiatives in order to provide or arrange for rapid and accurate response to news media needs.

• Prepares and edits appropriate materials about the Agency, its policies, actions and findings, and provides them to the public through the print and broadcast media. Develops and directs media relations strategies for the Agency.

• Responds to inquiries from a broad variety of news media, including major newspapers, national television and radio networks, national news magazines, local newspapers and radio and television stations, publications directed toward the Agency's beneficiary populations, and newsletters serving the health care industry.

• Manages press inquiries, coordinates sensitive press issues, and develops policies and procedures for how press and media inquiries are handled.

• Arranges formal interviews for journalists with the Agency's Administrator or other appropriate senior Agency staff; identifies for interviewees the issues to be addressed, and prepares or obtains background materials as needed.

• For significant Agency initiatives, issues media advisories and arranges press conferences as appropriate; coordinates material and personnel as necessary.

• Serves as liaison with the Department of Health and Human Services and White House press offices.

• Serves as focal point for all Agency interactions with Native American and Alaskan Native tribes.

• Coordinates State program issues/concerns (*i.e.*, waiver reviews, Medigap, Medicare-Select, survey and certification, Clinical Laboratory Improvement Act (CLIA), tribal affairs) with program staff and regional offices.

• Serves as coordinator of State health care policy and as liaison between CMS and State and local officials, and individual lobbyists representing State and local officials and advocate groups.

• Serves as coordinator of tribal affairs issues and liaison between CMS and State and local officials representing tribal affairs groups.

• Responsible for handling highly sensitive and complex correspondence from and to State and local elected officials. Reviews proposed regulations affecting States.

• Coordinates roll-out of waivers or other significant announcements relating to States.

• Manages CMS activities to better hear and interact with those beneficiaries, providers, and other stakeholders interested in the delivery of quality healthcare for our nation's seniors and beneficiaries with disabilities. Leads and coordinates an ongoing series of 'Open Door Forums' that provide a dialogue about both the many individual service areas and beneficiary needs within CMS.

• Manages and coordinates the Physicians Regulatory Issues Team (PRIT) consisting of CMS subject matter experts who work to reduce the regulatory burden on physicians who participate with the Medicare program.

• Manages and operates CMS' video production studio and satellite network to include product activities, design, development, installation, and monitoring of technological aspects of video broadcast and projection systems, and the development of policies and procedures for production operations.

• Administers CMS' identity and branding programs, develops related communication policies, standards and procedures, and oversees, executes and evaluates communication strategies.

• Represents the Administrator and senior executive staff in speaking engagements with Physician and Provider groups on the Agency's expectations regarding ongoing patient care. Serves as an Agency liaison with physician and provider groups on the development and implementation of evaluation management guidelines.

• In cooperation with senior executive staff, oversees and implements an outreach strategy to physicians and other provider organizations in order to educate them regarding the various options available under the Medicare program and how to discuss those options with patients.

2. Center for Beneficiary Choices (FAE)

• Serves as Medicare Beneficiary Ombudsman, as well as the focal point for all Agency interactions with beneficiaries, their families, care givers, health care providers, and others operating on their behalf concerning improving beneficiaries ability to make informed decisions about their health and about program benefits administered by the Agency. These activities include strategic and implementation planning, execution, assessment and communications.

• Assesses beneficiary and other consumer needs, develops and oversees activities targeted to meet these needs, and documents and disseminates results of these activities. These activities focus on Agency beneficiary service goals and objectives and include: development of baseline and ongoing monitoring information concerning populations affected by Agency programs; development of performance measures and assessment programs; design and implementation of beneficiary services initiatives; development of communications channels and feedback mechanisms within the Agency and between the Agency and its beneficiaries and their representatives; and close collaboration with other Federal and State agencies and other stakeholders with a shared interest in better serving our beneficiaries.

• Develops national policy for all Medicare Parts A, B, C and D beneficiary eligibility, enrollment, entitlement, premium billing and collection, coordination of benefits, rights and protections, dispute resolution process, as well as policy for managed care enrollment and disenrollment to assure the effective administration of the Medicare program, including the development of related legislative proposals.

• Oversees the development of privacy and confidentiality policies pertaining to the collection, use, and release of individually identifiable data.

• Coordinates beneficiary-centered information, education, and service initiatives.

• Develops and tests new and innovative methods to improve beneficiary aspects of health care delivery systems through Title XVIII, XIX, and XXI demonstrations and other creative approaches to meeting the needs of Agency beneficiaries.

• Assures, in coordination with other Centers and Offices, the activities of Medicare contractors, including managed care plans, agents, and State Agencies, meet the Agency's requirements on matters concerning beneficiaries and other consumers.

• Plans and administers the contracts and grants related to beneficiary and customer service, including the State

Health Insurance Assistance Program grants.

• Formulates strategies to advance overall beneficiary communications goals and coordinates the design and publication process for all beneficiary-centered information, education, and service initiatives.

• Builds a range of partnerships with other national organizations for effective consumer outreach, awareness, and education efforts in support of Agency programs.

• Serves as the focal point for all Agency interactions with managed health care organizations for issues relating to Agency programs, policy and operations.

• Develops national policies and procedures related to the development, qualification and compliance of health maintenance organizations, competitive medical plans and other health care delivery systems and purchasing arrangements (such as prospective pay, case management, differential payment, selective contracting, etc.) necessary to assure the effective administration of the Agency's programs, including the development of statutory proposals.

• Handles all phases of contracts with managed health care organizations eligible to provide care to Medicare beneficiaries.

• Coordinates the administration of individual benefits to assure appropriate focus on long term care, where applicable, and assumes responsibility for the operational efforts related to the payment aspects of long term care and post-acute care services.

• Serves as the focal point for all Agency interactions with employers, employees, retirees and others operating on their behalf pertaining to issues related to Agency policies and operations concerning employer sponsored prescription drug coverage for their retirees.

• Develops national policies and procedures to support and assure appropriate State implementation of the rules and processes governing group and individual health insurance markets and the sale of health insurance policies that supplement Medicare coverage.

• Primarily responsible for all operations related to Medicare Prescription Drug Plans and Medicare Advantage Prescription Drug (Part D) plans.

• Performs activities related to the Medicare Parts A & B processes (42 CFR Part 405, Subparts G and H), Part C (42 CFR Part 422, Subpart M), Part D (42 CFR Part 423, Subpart M) and the PACE program for claims-related hearings, appeals, grievances and other dispute resolution processes that are beneficiary-centered.

• Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of appeals policies to Medicare beneficiaries, Medicare contractors, Medicare Advantage (MA) plans, Prescription Drug Plans (PDPs), CMS regional offices, beneficiary advocacy groups and other interested parties.

9. Center for Medicaid and State Operations (FAS)

• Serves as the focal point for all Centers for Medicare & Medicaid Services activities relating to Medicaid, the State Children's Health Insurance Program, the Clinical Laboratory Improvement Act (CLIA), the survey and certification of health facilities and all interactions with States and local governments (including the Territories).

• Develops national Medicaid policies and procedures which support and assure effective State program administration and beneficiary protection. In partnership with States, evaluates the success of State Agencies in carrying out their responsibilities and, as necessary, assists States in correcting problems and improving the quality of their operations.

• Develops, interprets, and applies specific laws, regulations, and policies that directly govern the financial operation and management of the Medicaid program and the related interactions with States and regional offices.

• In coordination with other components, develops, implements, evaluates and refines standardized provider performance measures used within provider certification programs. Supports States in their use of standardized measures for provider feedback and quality improvement activities. Develops, implements and supports the data collection and analysis systems needed by States to administer the certification program.

• Reviews, approves and conducts oversight of Medicaid managed care waiver programs. Provides assistance to States and external customers on all Medicaid managed care issues.

• Develops national policies and procedures on Medicaid automated claims/encounter processing and information retrieval systems such as the Medicaid Management Information System (MMIS) and integrated eligibility determination systems.

• In coordination with the Office of Financial Management (OFM), directs, coordinates, and monitors program integrity efforts and activities by States and regions. Works with OFM to provide input in the development of program integrity policy.

• Through administration of the home and community-based services program and policy collaboration with other Agency components and the States, promotes the appropriate choice and continuity of quality services available to frail elderly, disabled and chronically ill beneficiaries.

• Directs the planning, coordination, and implementation of the survey, certification, and enforcement programs for all Medicare and Medicaid providers and suppliers, and for laboratories under the auspices of the CLIA. Reviews and approves applications by States for ''exemption'' from CLIA and applications from private accreditation organizations for deeming authority. Develops assessment techniques and protocols for periodically evaluating the performance of these entities. Monitors the performance of proficiency testing programs under the auspices of CLIA.

14. Office of E-Health Standards and Services (FHA)

• Develops and coordinates implementation of a comprehensive e-health strategy for CMS. Coordinates and supports internal and external technical activities related to e-health services and ensures that individual initiatives tie to the overall agency and Federal e-health goals strategies.

• Promotes and leverages innovative component initiatives. Facilitates cross-component awareness of various e-health projects.

• Develops regulations and guidance materials, and provides technical assistance on the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including transactions, code sets, identifiers, and security.

• Develops and implements the enforcement program for HIPAA Administrative Simplification provisions.

• Develops and implements an outreach program for HIPAA Administrative Simplification provisions. Formulates and coordinates a public relations campaign, prepares and delivers presentations and speeches, responds to inquiries on HIPAA issues, and maintains liaison with industry representatives.

• Adopts and maintains messaging and vocabulary standards supporting electronic prescribing under Medicare Part D.

• Serves as agency point of reference on Federal and private sector e-health initiatives. Works with Federal departments and agencies to identify

and adopt universal messaging and clinical health data standards, and represents CMS and HHS in national projects supporting the national health enterprise architecture and the national health information infrastructure.

• Coordinates and provides guidance on legislative and regulatory issues related to e-health standards and services.

• Collaborates with HHS on policy issues related to e-health standards, and serves as the central point of contact for the Office of the National Coordinator for Health Information Technology.

15. Office of Acquisition and Grants Management (FKA)

• Serves as the Agency's Head of the Contracting Activity. Plans, organizes, coordinates and manages the activities required to maintain an agency-wide acquisition program.

• Serves as the Agency's Grants Management Office, with responsibility for all CMS discretionary grants.

• Ensures the effective management of the Agency's acquisition and grant resources.

• Serves as the lead for developing and overseeing the Agency's acquisition planning efforts.

• Develops policy and procedures for use by acquisition staff and internal CMS staff necessary to maintain efficient and effective acquisition and grant programs.

• Advises and assists the Administrator, senior staff, and Agency components on acquisition and grant related issues.

• Plans, develops, and interprets comprehensive policies, procedures, regulations, and directives for CMS acquisition functions.

• Represents CMS at departmental acquisition and grant forums and functions, such as the Executive Council on Acquisition and the Executive Council for Grants Administration Policy.

• Serves as the CMS contact point with HHS and other Federal agencies relative to grant and cooperative agreement policy matters.

• Coordinates and/or conducts training for contracts and grant personnel, as well as project officers in CMS components.

• Develops agency-specific procurement guidelines for the utilization of small and disadvantaged business concerns in achieving an equitable percentage of CMS' contracting requirements.

• Provides cost/price analyses and evaluations required for the review, negotiation, award, administration, and closeout of grants and contracts. Provides support for field audit capability during the pre-award and closeout phases of contract and grant activities.

• Develops and maintains an automated procurement management system. Manages procurement information activities (*i.e.*, collecting, reporting, and analyzing procurement data).

Dated: April 28, 2005.

Karen Pellham O'Steen,

Director, Office of Operations Management, Centers for Medicare & Medicaid Services.

[FR Doc. 05–10262 Filed 5–26–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans; Funding Opportunity

Funding Opportunity Title: Projects that Improve Child Well-Being by Fostering Healthy Marriages within Native Communities.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ANA–NA–0021.

CFDA Number: 93.612.

Due Date for Applications: 07/8/2005.

Executive Summary: The Administration for Native Americans, within the Administration for Children and Families, announces the availability of fiscal year (FY) 2005 funds for projects that include approaches to improve child well-being by removing barriers associated with forming and sustaining healthy families and marriages in Native American communities. The Administration for Native Americans (ANA's) FY 2005 goals and program areas of interest are focused on strengthening children, families, and communities through financial assistance to community-based organizations including faith-based organizations, Tribes, and Village governments.

The Program Areas of Interest are projects that ANA considers supportive to Native American communities. Eligibility for funding is restricted to projects of the type listed in this program announcement and these Program Areas of Interest are ones which ANA sees as particularly beneficial to the development of healthy Native American communities. The primary objectives of these projects are pre-marital education, marriage education and relationship skills for youth, adults, and couples. Project components may include but are not limited to: Healthy relationship skills, communication skills, conflict resolution, foster parenting, marital counseling, abstinence education, and fatherhood accountability.

Financial assistance under this program is provided utilizing a competitive process in accordance with the Native American Programs Act of 1974, as amended. The purpose of this Act is to promote the goal of social self-sufficiency for American Indians, Native Hawaiians, Alaskan Natives, and other Native American Pacific Islanders, including American Samoa natives.

I. Funding Opportunity Description

This funding announcement seeks to fund projects that offer approaches to remove barriers to forming lasting families and healthy marriages in Native communities. Such projects shall consider activities that provide community supports, relationship skills education, and other activities necessary to promote the well-being of Native American children and families.

The Administration for Children and Families (ACF) Healthy Marriage Initiative (HMI) seeks to improve child well-being by helping those who choose marriage for themselves to develop the skills and knowledge necessary to form and sustain healthy marriages. Research demonstrates the strong correlation between family structure and a family's social and economic well-being. More information on the HMI is available at *http://www.acf.hhs.gov/healthymarriage/index.html*.

The Native American Healthy Marriage Initiative (NAHMI) is a component of the ACF Healthy Marriage Initiative and specifically promotes a culturally competent strategy for fostering healthy marriage, responsible fatherhood, child well-being, and strengthening families within the Native American Community. ANA believes a focused strategy is needed to support the Native American Community because:

• There is a perception the Healthy Marriage Initiative has not considered the unique experiences of the Native American population;

• There is a clear link between healthy marriage and child well-being;

• There are crisis-level statistics (*e.g.* rates of divorce and non-married child-bearing).

○ 34.4% of Native-American (NA) adults are married, compared to 51.3% of white adults, 41% of African Americans, and 60% of Hispanic adults (2002).

○ 25.6% of NA couples divorce per year, compared to 20.4% of white

couples, 22.7% of African Americans, and 15.2% of Hispanic couples (2002).

○ 58.7% of NA births are to unmarried women, compared to 27.7% for white women, 68.4% for African-American women, and 42.5% of Hispanic women (2001).

○ 36.6% of NA children live with single parents, compared to 18.7% of white children, and 32.6% of Hispanic children (2000).

The NAHMI focused strategy includes three components:

1. Education and Communication.
2. Creation and Enhancement of Collaborations and Partnerships.
3. Identifying Resources.

NAHMI Goals and Objectives are to:

• Improve the well-being of Native American children.

• Improve the well-being of Native American children living in healthy, two-parent married households.

• Improve the number of healthy marriages in the Native American community.

• Improve the overall well-being of the Native American community.

• Develop and improve the capacity within the Native American community to provide healthy marriage activities.

Projects funded under this announcement will be expected to:

Provide for the project director and the evaluator to attend an early kickoff meeting for grantees funded under this priority area to be held within the first three months of the project (first year only) in Washington, DC.

ANA Administrative Policies: Applicants must comply with the following ANA Administrative Policies:

• An applicant must provide a 20% non-Federal match of the approved project costs. Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a), under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions).

• An application from a Tribe, Alaska Native Village or Native American organization must be from the governing body.

• A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit organization can accomplish this by providing one of the following verifiable documents: (i) 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; or (ii) a copy of the currently valid IRS tax exemption certificate; or (iii) 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 none of the net earnings accrue to any private shareholders or individuals; or (iv) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (v) any of the items in the subparagraphs immediately 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. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determination of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA eligibility.

• If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. Applicants must provide information that at least a majority of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community be to served.

• Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy.

• ANA will review proposed projects to ensure applicants have considered all resources available to the community to support the project.

• Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community.

• All funded applications will be reviewed to ensure that the applicant has provided a positive statement to give credit to ANA on all materials developed using ANA funds.

• ANA will not accept applications from tribal components that are tribally authorized divisions unless the ANA application includes a tribal resolution.

• ANA will only accept one application per eligible entity. The first application received by ANA shall be the application considered for competition unless ANA is notified in writing which application should be considered for competitive review.

• ANA funds short-term projects not programs. Projects must have definitive goals and objectives that will be achieved by the end of the project period. All projects funded by ANA must be complete, self-sustaining, or supported by other than ANA funding at the end of the project period.

• Before funding the second year of a multi-year grant, ANA will require verification and support documentation from the grantee that objectives and outcomes proposed in the preceding year were accomplished, and the non-Federal share requirement has been met.

• ANA reviews the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the Objective Work Plan (OWP).

• Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, and discuss the community-based delivery strategy of the project, identify and describe the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based delivery system. National and Regional organizations must describe their membership, define how the organization operates, and demonstrate native community and/or Tribal government support for the project. The type of community to be served will determine the type of documentation necessary to support the project.

Definitions

Program specific terms and concepts are defined and must be used as a guide in writing and submitting the proposed project. The funding for allowable projects in this program announcement is based on the following definitions:

Authorized Representative: The person or person(s) authorized by Tribal or Organizational resolution to execute documents and other actions required by outside agencies.

Budget Period: The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

Community: A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information must be provided: (1) A description of the

population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe.

Community Involvement: How the community participated in the development of the proposed project, how the community will be involved during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meeting minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community.

Completed Project: A project funded by ANA is finished, self-sustaining, or funded by other than ANA funds, and the results and outcomes are achieved by the end of the project period.

Consortium-Tribal/Village: A group of Tribes or Villages that join together either for long-term purposes or for the purpose of an ANA project.

Construction: The initial building of a facility.

Core Administration: Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes unrelated to the actual management or implementation of the ANA project.

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and/or agricultural capacities necessary for a sustainable local community. Economic development includes activities and actions that develop sustainable, stable, and diversified private sector local economies. For example, initiatives that support employment options, business opportunities, development and formation of a community's economic infrastructure, laws and policies that result in the creation of businesses and employment options, and opportunities that provide for the foundation of healthy communities and strong families.

Equipment: Tangible, non-expendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Governance: Involves assistance to Tribal and Alaska Native village governments to increase their ability to exercise local control and decision-making over their resources.

Impact Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be quantifiable, measurable, verifiable and related to the outcome of the project to determine that the project has achieved its desired objective and can be independently verified through ANA monitoring and evaluation.

In-kind Contributions: In-kind contributions are property or services that benefit a federally assisted project which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed in-kind match must meet the applicable requirements found in 45 CFR parts 74 and Part 92.

Letter of Commitment: A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. Statements in an application about resources which have been committed to or support a proposed ANA project, but not supported with documentation, will be disregarded.

Leveraged Resources: The total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceed the 20% non-Federal match required for an ANA grant. Such resources may include any natural, financial, and physical resources available within the tribe, organization, or community to assist in the successful completion of the project. An example would be a letter from an organization that agrees to provide a supportive action, product, and service, human or financial contribution that will add to the potential success of the project.

Minor Renovation or Alteration: Work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Minor alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction and major renovations. A minor alteration and or renovation must be incidental and essential for the project (''incidental'' meaning the total alteration and renovation budget must not exceed the lesser of $150,000 or 25 percent of total direct costs approved for the entire project period.).

Multi-purpose Organization: A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as day care, education, and training.

Multi-year Project: Encompasses a single theme and requires more than 12 or 17 months and up to 24 or 36 months to complete. A multi-year project affords the applicant an opportunity to develop and address more complex and in-depth strategies that cannot be completed in one year. A multi-year project is a series of related objectives with activities presented in chronological order over a two or three-year period.

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable outcomes that would benefit the community and directly contribute to the achievement of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. Objectives are an important component of Criterion III and are the foundation for the Objective Work Plans.

Objective Work Plan (OWP): The project plan the applicant will use in meeting the results and benefits expected for the project. The results and benefits are directly related to the Impact Indicators. The OWP provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed in the Objective Work Plan. ANA will require separate OWPs for each year of the project (Form OMB# 0980–0204 exp 10/31/2006).

Partnerships: Agreements between two or more parties that will support the

development and implementation of the proposed project. Partnerships include other community-based organizations or associations including faith-based organizations, Tribes, Federal and State agencies, and private or non-profit organizations.

Real Property: Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

Resolution: Applicants are required to include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution must indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution must indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any eligible matching funds (if applicable).

Sustainable Project: A sustainable project is an ongoing program or service that can be maintained without additional ANA funds.

Self-Sufficiency: The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self-sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well-being, and culture of the people that reside and work in the community.

Social Development: Investment in human and social capital for advancing the well-being of members of the Native American community served. Social development is the action taken to support the health, education, culture, and employment options that expand an individual's capabilities and opportunities, and that promote social inclusion and combat social ills.

Total Approved Project Costs: The sum of the Federal request plus the non-Federal share.

Priority Area 1

Projects That Improve Child Well-Being by Fostering Healthy Marriage Within Native Communities

Description:

Program Areas of Interest are:

- Projects that implement and test new, unique or distinctive approaches for delivering services to a specific population.
- Projects that test whether a program or service that has proven successful in one location or setting can work in a different context.
- Projects that test a theory, idea, or method that reflects a new and different way of thinking about service delivery.

ACF strongly encourages applicants to consult their local domestic violence coalition to learn more about the information and services they provide to the community.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $1,000,000.

Anticipated Number of Awards: 5 to 8.

Ceiling on Amount of Individual Awards Per Budget Period: $150,000.

Floor on Amount of Individual Awards Per Budget Period: $50,000.

Average Projected Award Amount Per Budget Period: $125,000.

Length of Project Periods: 36 month project with three 12 month budget periods.

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

III. Eligibility Information

1. Eligible Applicants

Native American tribal governments (Federally recognized); Native American tribal organizations (other than Federally recognized tribal governments);

Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education;

Non-profits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

Additional Information on Eligibility: An applicant must be one of the following to be eligible under this announcement:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes:
- Incorporated non-profit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated non-profit Native American organizations with Native American community-specific objectives;
- Alaska Native villages, as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or non-profit village consortia;
- Incorporated non-profit Alaska Native multi-purpose community-based organizations;
- Non-profit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Non-profit Native organizations in Alaska with village specific projects;
- Public and non-profit private agencies serving Native Hawaiians;
- Public and non-profit private agencies serving native peoples from Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands (the populations served may be located on these islands or in the United States);
- Tribally-controlled Community Colleges, Tribally-controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands which serve Native Pacific Islanders; and
- Non-profit Alaska Native community entities or Tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs.

2. Cost Sharing/Matching

Yes

Grantees are required to meet a non-Federal share of the project costs, in accordance with *42 U.S.C. 2991(b)(3)(e)(1).* Grantees must provide at least *20%* of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of *$125,000,* requesting *$100,000* in ACF funds, must provide a non-Federal share of at least *$25,000* (*20%* of total approved project cost of *$125,000.*) Grantees will be held accountable for commitments of non-federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds. Lack of supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

3. Other

All applicants must have a Dun & Bradstreet number. 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 Federal grant applicants to provide a Dun & 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.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- 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.
- A copy of a currently valid IRS tax exemption certificate.
- 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 earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately 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,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 will be considered non-responsive and will not be considered for funding under this announcement.

Applications that do not include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period will be considered non-responsive and will not be considered for competition. [See Section I. Funding Opportunity Description—Definitions, for information on resolutions]

Applications, if the applicant is other than a Tribe or Alaska Native Village government, that do not include proof that a majority of the governing board of directors is representative of the community to be served, will be considered non-responsive and will not be considered for competition.

Please see Section III.2 Other, concerning requirements for the cost matching which do not impact the responsiveness of an application for competitive review.

IV. Application and Submission Information

1. Address To Request Application Package

To learn more about ANA and receive information about Training and Technical Assistance (T/TA) contact:

Region I: AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV. Native American Management Services, Inc., 6858 Old Dominion Drive, Suite 302, McLean, VA 22101, Phone: 888–221–9686, Fax: 703–821–3680, Rondelle Clay, Project Manager; Email: *rclay@namsinc.org;* URL: *http://www.anaeastern.org.*

Region II: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY. ACKCO, Inc., 1326 N. Central, Suite 208, Phoenix, Arizona 85004, Toll Free: 800–525–2859, Direct: 602–253–9211, Fax: 602–253–9135, Theron Wauneka, Project Manager; Email: *theron.wauneka@ackco.com;* URL: *http://www.anawestern.org.*

Region III: Alaska. Native American Management Services, Inc., 11723 Old Glenn Highway, Suite 201, Eagle River, Alaska 99577, Toll Free: 877–770–6230, Direct: 907–694–5711, Fax: 907–694–5775, P.J. Bell, Project Manager; Email: *region3@gci.net;* URL: *http://www.anaalaska.org.*

Region IV: American Samoa (AS), Guam, Hawaii (HI), Commonwealth of Northern Mariana Islands (CNMI). Council for Native Hawaiian Advancement, 33 South King Street, Suite 513, Honolulu, Hawaii 96813, Toll-Free: 800–709–2642, Local: 808–521–5011, Fax: 808–521–4111, Lilia Kapuniai, Vice President, Community Development; E-Mail: *info@anapacific.org;* URL: *http://www.anapacific.org.*

2. Content and Form of Application Submission

Please refer to Section I. Funding Opportunity Description, to review general ANA Administrative Policies and Section IV. 5. Funding Restrictions.

Application Submission: Each application should include one signed original and two additional copies of the complete application. The original must include all required forms, certifications, assurances, and appendices, contain an original signature by an authorized representative, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also 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. A complete application for assistance under this Program Announcement consists of three parts. Part One includes the SF 424, other required government forms, and other required documentation. Part Two of the application is the project narrative. This section of the application may not exceed 40 pages. The line-item budgets, budget justifications and the OWP form (OMB Control Number 0980–0204, exp 10/31/2006) will be exempt from the page limitation. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20-page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements).

Electronic Submission: While ACF does have the capability to receive program announcement applications electronically through Grants.gov, electronic submission of applications will not be available for this particular announcement. There are required application form(s) specific to ANA that have not yet received clearance from Grants.gov. While electronic submission of applications may be available in the next fiscal year for this program, no electronic submission of applications will be accepted for this announcement this year as they would be missing those required ANA forms and be considered incomplete.

Organization and Preparation of Application: Due to the intensity and

pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the table below. ANA strongly suggests applicants label the application for ease of reviewing. The application must begin with the information requested in Part One of the chart in the prescribed order. Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format will reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions.

ANA Application Format: ANA requires all applications to be labeled in compliance with the format provided in the program announcement. This format applies to all applicants submitting applications for funding. All pages submitted (including Government Forms, certifications and assurances) must be numbered consecutively (for example, the first page of the application is the SF 424 and must be labeled as page one). The paper size shall be 8.5 x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. (**Note:** the 1.5 line spacing does not apply to the Project Abstract Form, Appendices, the Table of Contents, the Objective Work Plans, and the Budget.) The font size shall be 12-point and the font type shall be Times New Roman.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications: The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO-KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Those organizations required to provide proof of non-profit status, please refer to Section III.3.

Please see Section V.1, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date for Applications: 7/8/2005.

Explanation of Due Dates: The closing date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due 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 time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Receipt acknowledgement for application packages will not be provided to applicants who submit their package via mail, courier services, or by hand delivery. However, applicants will receive an electronic acknowledgement for applications that are submitted via *http://www.Grants.gov.*

Late Applications: Applications that 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.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

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 mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist: You may use the checklist below as a guide when preparing your application package.

PART ONE.—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

What to submit	Required content	Required form or format	When to submit
Table of Contents	See Section IV	Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit.	By application due date.
SF424	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF424A	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Assurances and Certifications.	See Section IV	*http://www.acf.hhs.gov/programs/ofs/forms.htm*	By award date.
Indirect Cost Agreement.	See Section V	Organizations and Tribes must submit a current indirect cost agreement (if claiming indirect costs) that aligns with the approved ANA project period. The Indirect Cost Agreement must identify the individual components and percentages that make up the indirect cost rate.	By award date.
Proof of Non-Profit Status.	See Section III	As described in this announcement under Section III ''Additional Information on Eligibility''.	By award date.
Resolution	See Section I	Information for submission can be found in the Program Announcement Section I, ''Definitions''.	By application due date.
Board of Directors Documentation.	See Section I	As described in this announcement under Section I ''ANA Administrative Policies''.	By application due date.
Audit Letter	See Section I	A Certified Public Accountant's ''Independent Auditors' Report on Financial Statement.'' This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $500,000 or more of Federal funds). Applicant must also include that portion of the audit document that identifies all other Federal sources of funding entitled ''Supplemental Schedule of Expenditures of Federal Awards''.	By application due date.
Non-Federal Share of Waiver Request, per CFR 1336.50(b).	See Section I	A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program regulations. (if applicable).	By award date.
Certification regarding Maintenance of Effort.	See Section IV.2	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By award date.
Certification regarding Lobbying Disclosure of Lobbying Activities—SF LLL.	See Section IV.2.	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By award date.
Environmental Tobacco Smoke Certification.	See Section IV.2.	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By award date.

PART TWO.—ANA APPLICATION REVIEW CRITERIA

What to submit	Required content	Required form or format; ANA application review criteria; this section may not exceed 40 pages	When to submit
Criteria One (10 pts)	See Section V	Introduction and Project Summary/Application Format: Include the ANA Project Abstract form (OMB # 0980–0204 exp. 10/31/2006).	By application due date.
Criteria Two (20 pts)	See Section V	Need for Assistance	By application due date.
Criteria Three (25 pts)	See Section V	Project Approach Include an Objective Work Plan (OWP) form (OMB # 0980–0204, exp. 10/31/2006) for each 12-month budget period. A 17-month project period requires only one OWP **Note:** The OWP is not included in the page count for this Part.	By application due date.
Criteria Four (15 pts)	See Section V	Organizational Capacity	By application due date.
Criteria Five (15 pts)	See Section V	Project Impact/Evaluation	By application due date.
Criteria Six (15 pts)	See Section V	Budget and Budget Justification/Cost Effectiveness. **Note:** The Budget and Budget Justification is not included in the page count for this Part.	By application due date.

PART THREE.—APPENDIX

What to submit	Required content	Required form or format; this section may not exceed 20 pages	When to submit
Appendix	See Section I	Part Three includes only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: Letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers or returned to the applicant.	By application due date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	Found in *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.

4. Intergovernmental Review

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' or 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities''.

5. Funding Restrictions

ANA does not fund:

- Activities in support of any foreseeable litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122.
- ANA does not fund duplicative projects or allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR 1336, Subpart C, but before funding decisions are complete [See Section I. Funding Opportunity Description—ANA Administrative Policies regarding short-term projects].
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations that are otherwise eligible to apply for ANA funding. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives.
- The purchase of real property or construction because these activities are not authorized by the Native American Programs Act of 1974, as amended.
- Core administration (See Definitions) functions, or other activities, that essentially support only the applicant's ongoing administrative functions and are not related to the proposed project.
- Costs associated with fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award.
- Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village.
- Major renovations or alterations are prohibited activities because these activities are not authorized under the Native American Programs Act of 1974 as amended. Minor alterations, as defined in this announcement, may be allowable.
- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long range development plan.
- The support of ongoing social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund activities by a consortium of tribes that duplicate activities for which a consortium member tribe also receives funding from ANA.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. Please see Section IV.3 for an explanation of due dates. Applications should be mailed to: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Washington, DC 20447.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern 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. eastern time, Monday through Friday. Applications

should be delivered to: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management—Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street SW., Washington, DC 20447.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

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).

Part I—The Project Description Overview

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, information responsive to each of the requested evaluation criteria must 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 in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

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.

Approach

Outline a plan of action that 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 that 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. 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.

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. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

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) any of the items

immediately 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.

Budget and Budget Justification

Provide a budget with 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. 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.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. ''Federal resources'' refers only to the ACF grant for which you are applying. ''Non-Federal resources'' are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool

should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria: The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*i.e.*, from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Approach—25 Points

Project Approach: The applicant's narrative must be clear and concise. The narrative must include a detailed project description with goals and objectives. It must discuss the project strategy and implementation plan over the project period. The applicant must use the Objective Work Plan (OWP) form to identify the project objectives, time frames, proposed activities, results and benefits expected and criteria for evaluating results and benefits, as well as the individuals responsible for completing the objectives and performing the activities. Within the results and benefits section of the OWP, the applicant must provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. The extent to which the applicant can effectively demonstrate that they have adequate knowledge of the information and services provided by domestic violence coalitions within their community.

The applicant must also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project, utilizing the column for Non-Salaried Personnel to list the hours incurred for these activities. The applicant must discuss ''Leveraged Resources'' (see Definitions) used to strengthen and broaden the impact of the proposed project. The applicant must discuss how commitments and contributions from other entities will enhance the project. Applicants must discuss the relationship of non-ANA funded activities to those objectives and activities that will be funded with ANA grant funds.

Objectives and Need for Assistance—20 Points

Need for Assistance: Applicant must show a clear relationship between the proposed project, the social and economic development strategy, and the community's long-range goals. The need for assistance must clearly identify the physical, economic, social, financial, governmental, and institutional challenges and problem(s) requiring a solution that supports the funding request. Describe the community (see Definitions) to be affected by the project and the community involvement in the project. The applicant must describe the community's long-range goals, the community planning process, and how the project supports the community goals. The applicant must describe how the proposed goals, objectives, and activities reflect either the economic and social development or governance needs of the local community. Discuss the geographic location of the project and where the project and grant will be administered. Applicant must describe how the proposed project objectives and activities relate to a locally determined strategy.

The applicant must provide documentation of the community's support for the proposed project. Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, identify the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based project delivery strategy. National and Regional organizations must also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. Proposed project objectives support the identified need and must be measurable.

Budget and Budget Justification—15 Points

Budget and Budget Justification/Cost Effectiveness: An applicant must submit an itemized budget detailing the applicant's Federal and non-Federal share and cite source(s) of funding. The applicant must provide a detailed line-item Federal and Non-Federal share budget by year for each year of project funds requested. A budget justification narrative to support the line-item budget request must be included for each year of project funds requested. The budget must include a line-item justification for each Object Class Category listed under Section B ''Budget Categories'' of the SF 424 A ''Budget Information-Non Construction Programs'' form. The line-item budget and budget justification narrative must include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project.

The non-Federal budget share must identify the source and be supported by letters of commitment (see Definitions). Letters of commitment are binding when they specifically state the nature, the amount, and conditions under which another agency or organization or individual will support a project. These resources may be human, natural, or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources. Letters of Support merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters, as they do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a copy of its current Indirect Cost Rate Agreement must be included in the application, with all costs broken down by category so ANA reviewers can be certain that no budgeted line items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement may not be able to claim the allowable cost, may have the grant

award amount reduced, or may experience a delay in grant award.

Applicants are strongly encouraged to include sufficient funds for principal representatives, such as the applicant's chief financial officer or project director to travel to one ANA post-award grant training and technical assistance workshop. This expenditure is allowable for new grant recipients and optional for grantees that have had previous ANA grant awards. Applicants may also include costs for two staff persons to attend the ACF National Native American Conference, Marriage Best Practices Conference, and an ACF Consultation Conference.

Cost Effectiveness: This section of the criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving economic and social self-sufficiency for Native American communities. Applicants demonstrate this by: summarizing partnerships and the efficient use of leveraged resources; explaining the impact on the identified community through measurable project outcomes, and presenting a project that is completed, self-sustaining or supported by other than ANA funds by the end of the project period.

Results or Benefits Expected—15 Points

Project Impact/Evaluation:

In this criterion, the applicant will discuss the ''Impact Indicators'' (see Definitions) and the benefits expected as a result of this project. Impact indicators identify qualitative and quantitative data directly associated with the project. Each applicant must submit five impact indicators to support the applicant's project. Two of the five are standard and required across all ANA programs. For each impact indicator submitted the applicant must discuss the relevance of the impact indicator to the project, the method used to track the indicator, and the method used to determine project success. Impact indicators will be reported to ANA in the grantee's quarterly report. The applicant must indicate a target number to be achieved for the required standard impact indicators. In addition to the two standard required impact indicators, an applicant must also submit three additional impact indicators. These three impact indicators may be selected from the suggested list given below, or they may be developed for the specific proposed project, or the applicant may submit a combination of both the ANA suggested indicators and applicant project-specific indicators. The two standard required impact indicators are; (a) Number of partnerships formed; and (b) Amount of dollars leveraged beyond the required NFS match. The applicant must also choose three indicators from the list below or submit three other project specific indicators: (1) Number of infrastructures and administrative systems, including policies and procedures developed and implemented; (2) Number of people to successfully complete a workshop/training; (3) Number of children, youth, families or elders assisted or participating; (4) Number of volunteer hours; (5) Number of faith-based and community-based partnerships; (6) Number of jobs created.

The applicant should discuss the projects value and long-tem impact to the participants and the community and explain how the information relates to the proposed project goals, objectives and outcomes. The applicant should discuss how the project will be complete, self-sustaining, or supported by other than ANA funds at the end of the project period. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period or quarter (if applicable). Project outcomes should support the identified need and should be measurable and quantifiable.

ANA suggests applicants describe a logic model that presents the conceptual framework for the proposed project and the linkages among the project elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project resources, the proposed activities/processes/outcomes directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur.

Organizational Profiles—15 Points

Organizational Capacity: In this criterion, the application provides information on the management structure of the applicant and the organizational relationships with its cooperating partners. Applicants and their partner organizations (if any) should demonstrate experience and background in providing family support and healthy marriage activities. Include an organizational chart that indicates where the proposed project will fit in the existing structure. Demonstrate experience in the program area. Describe the administrative structure, and the applicant's ability to administer and implement a project of the proposed scope and its capacity to fulfill the implementation plan. Applicants are required to affirm that they will credit the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds.

Applicants must list all current sources of Federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues must be discussed in this criterion.

Applicants must provide ''staffing and position data'' to include a proposed staffing pattern for the project where the applicant highlights the new project staff. Positions discussed in this section must match the positions identified in the Objective Work Plan and in the proposed budget. Applicant must provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff. Full position descriptions are required to be submitted and included in the Appendix. Applicant must explain how the current and future staff will manage the proposed project. Brief biographies of key positions or individuals must be included. Note: Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant.

If applicable, applicant must identify consortium membership. The consortium applicant must be the recipient of the funds. A consortium applicant must be an ''eligible entity'' as defined by this Program Announcement and the ANA regulations. Consortium applicants must include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortium members supporting the ANA application. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes that duplicate activities for which member Tribes also receive funding from ANA. The consortium application must identify the role and responsibility of each participating consortia member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project.

If relevant to the project, applicants must provide a Business Plan or any Third-Party Agreements in the

appendices. (Not counted in Appendix page limit).

Introduction Project Summary/ Abstract—10 Points

Introduction and Project Summary/ Application Format: Using the ANA Project Abstract form (OMB Control Number 0980–0204, Exp. 10/31/2006), the applicant must include: the name of the applicant, the project title, the Federal amount requested, the amount of matching funds to be provided, length of time required to accomplish the project, the goal of the project, a list of the project objectives (not activities), the estimated number of people to be served, and the expected outcomes of the project.

In addition to the Project Abstract form, the applicant will provide an introductory narrative that includes: an overview of the project, a description of the community to be served, the location of the identified community, a declarative statement identifying the need for the project, and a brief overview of the project objectives, strategy and community or organizational impact.

Application Format: Applicants are required to submit applications in a standard format, following the ANA requirements on application length, font, numbering, line spacing, etc. Please refer to Section IV Part 2, ''Content and Form of Application Submission'' for detailed formatting instructions.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Initial Screening: Each application submitted under an ANA program announcement will undergo a pre-review screening for: (a) timeliness-the application was received by 4:30 pm eastern time on the closing date; (b) the applicant has submitted a current dated and signed resolution from the governing body; (c) the federal request does not exceed the upper value of the dollar range specified; and, (d) if the applicant is not a Tribe or Alaska Native village government, there is proof a majority of the board of directors is representative of the community to be served. An application that does not meet one of the above elements will be determined to be incomplete and excluded from the competitive review process. Applicants, with incomplete applications, will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. The notification will include the reviewer comments. Applicants are not ranked based on general financial need. Applicants, who are initially excluded from competition because of ineligibility, may appeal the agency's decision. Applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C).

Competitive Review Process: Applications that pass the initial ANA screening process will be analyzed, evaluated and rated by a review panel on the basis of the Evaluation Criteria. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability of ANA to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria standardizes the review of each application and distributes the number of points more equitably. Applications will be evaluated in accordance with the program announcement criteria and ANA's program areas of interest. A determination will be made as to whether the project is an effective use of Federal funds.

Application Review Criteria: Applicants will be reviewed based on the following criteria and points: ANA's six criteria categories are Introduction and Project Summary/Application Format; Need for Assistance; Project Approach; Organizational Capacity; Project Impact/Evaluation; and Budget and Budget Narrative/Cost Effectiveness.

Application Consideration: The Commissioner's funding decision is based on an analysis of the application by the review panel, panel review scores and recommendations; an analysis by ANA staff; review of previous ANA grantee's past performance; comments from State and Federal agencies having contract and grant performance related information; and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the Federal Government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

Since ACF will be using non-Federal reviewers in the process, 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, if otherwise required for individuals. The copies may include summary salary information.

Approved but Unfunded Applications: Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

3. Anticipated Announcement and Award Dates

Approximately 120 days after the application due date, the successful applicants will be notified by mail through the issuance of a Financial Assistance Award document which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and sent to the applicants Authorizing Official. Applications not funded in this competition will be notified in writing.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

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); 45 CFR part 1336, subpart C; and, 42 U.S.C. 2991 *et seq.*—Native American Programs Act of 1974.

Direct Federal grants, subaward funds, or contracts under this Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the Equal Treatment For Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at either 45 CFR 87.1 or the HHS Web site at: *http://www.os.dhhs.gov/fbci/waisgate21.pdf*.

3. Reporting Requirements

Program Progress Reports: Quarterly.

Financial Reports: Quarterly.

An original and one copy of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Program Progress reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final Program Progress report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Financial Status Reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final SF 269 report shall be due 90 days after the end of the project period. In addition, these demonstration projects will participate in monthly regional conference calls to discuss the implementation of the NAHMI project.

VII. Agency Contacts

Program Office Contact: ANA Applicant Help Desk, Aerospace Center, 8th Floor West, 370 L'Enfant Promenade SW., Washington, DC 20447, Phone: 877–922–9262; Email: *ana@acf.hhs.gov*.

Grants Management Office Contact: Tim Chappelle, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants Aerospace Center—8th Floor West, 370 L'Enfant Promenade SW., Washington, DC 20447, Phone: 202–401–2344; Email: *tichappelle@acf.hhs.gov*.

VIII. Other Information

Notice: Beginning with FY 2006, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005 applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *http://www.Grants.gov*. Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html*.

Training and Technical Assistance: All potential ANA applicants are eligible to receive free T&TA in this program area. Prospective applicants must check ANA's Web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262.

Please reference Section IV.3 for details about acknowledgement of received applications.

Dated: May 24, 2005.

Kimberly Romine,

Deputy Commissioner, Administration for Native Americans.

[FR Doc. 05–10661 Filed 5–26–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA No.: 93.566, Refugee Assistance—State Administered Programs]

Office of Refugee Resettlement; Proposed Notice of Allocations to States of FY 2005 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Proposed notice of allocations to States of FY 2005 funds for refugee social services.

SUMMARY: This notice establishes the proposed allocations to States of FY 2005 funds for refugee [1] social services under the Refugee Resettlement Program (RRP). The final notice will reflect amounts adjusted based upon final adjustments to FY 2002, FY 2003 and FY 2004 (October 1, 2001 through September 30, 2004) data submitted to ORR by States.

FOR FURTHER INFORMATION CONTACT: Kathy Do, Division of Budget, Policy, and Data Analysis (BPDA), telephone: (202) 401–4579, e-mail: *kdo@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available (after rescission and adjustments) $164,888,000 in Fiscal Year 2005 refugee social service funds as part of the FY 2005 appropriation under the Consolidated Appropriations Act, 2005, (Pub. L. 108–447). This amount reflects a rescission of 0.008 applied across the board to all line items.

The FY 2005 Conference Report (H. Rpt. No. 108–792) reads as follows with respect to Refugee and Entrant Assistance:

''The conference agreement includes $488,336,000 for the refugee and entrant assistance programs rather than $491,336,000 as proposed by the House and $477,239,000 as proposed by the Senate * * *

The conference agreement provides $166,218,000 for social services, the same level as proposed in the House bill. The Senate had proposed $155,121,000 for this program. Within the funds provided, the conference agreement includes $19,000,000 as outlined in the House report. The conferees intend that funds provided above the request for social services shall be used for refugee school impact grants and for additional assistance in resettling and meeting the needs of the Hmong and Somali Bantu refugees expected to arrive during 2004 and 2005.

The conferees also urge the Office of Refugee Resettlement to continue supporting discretionary grant activities, such as the individual development accounts, community service employment, and elderly refugee programs to the extent they have been successful in integrating refugees into society and promoting their self sufficiency.''

The House Committee Report, H. Rpt. No. 108–636 states under Social Services:

''The Committee provides $166,218,000 for social services. This is $15,097,000 more than the budget request and $14,000,000 more than the fiscal year 2004 level. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The Committee intends that

[1] Eligibility for refugee social services include refugees, asylees, Cuban and Haitian entrants, certain Amerasians from Viet Nam who are admitted to the U.S. as immigrants, certain Amerasians from Viet Nam who are U.S. citizens, and victims of a severe form of trafficking who receive certification or eligibility letters from ORR, and certain other specified family members. *See* 45 CFR 400.43 and ORR State Letter #01–13 on the Trafficking Victims Protection Act, dated May 3, 2001, as modified by ORR State Letter #02–01, January 4, 2002, and ORR State Letter #04–12, June 18, 2004.

The term ''refugee,'' used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services.

funds provided above the request shall be used for Refugee School Impact Grants and for additional assistance in resettling and meeting the needs of the Hmong refugees expected to arrive during 2004 and 2005.

Within the funds provided, the Committee has included $19,000,000 for increased support to communities with large concentrations of Cuban and Haitian refugees of varying ages whose cultural differences make assimilation especially difficult, justifying a more intense level and longer duration of Federal assistance for healthcare and education.''

ORR intends to use the $164,888,000 appropriated (after rescission) for FY 2005 social services as follows:

- $77M will be allocated under the 3-year population (FYs 2002, 2003, and 2004) formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $2M will be allocated under the 3-year population formula, as a set-aside for citizenship and naturalization preparation services for the elderly.
- Approximately $17M is expected to be awarded as new social service discretionary grants under new and prior year standing competitive grant announcements issued separately from this proposed notice.
- Approximately $19M is expected to be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds will be awarded under a prior year separate announcement.
- Approximately $24M is expected to be awarded through discretionary grants for continuation of awards made in prior years.
- Approximately $15M in FY 2005 social services funding will be awarded under a separate announcement for educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees.
- Approximately $9.6M is reserved for future distribution.

Refugee Social Service Funds

The FY 2005 population figures that have been used for this proposed formula social services allocation include refugees, Amerasians from Viet Nam, Cuban/Haitian entrants, Havana parolees, asylees, and victims of severe forms of trafficking for FYs 2002, 2003, and 2004. These population figures were adjusted in the proposed allocation to reflect more accurate information on arrivals, secondary migration (including that of victims of severe forms of trafficking), asylees, and entrant data submitted by States. (See Section IV. Basis of Population Estimates.)

The Director proposes to allocate $77,136,460 to States on the basis of each State's proportion of the national population of refugees who have been in the U.S. three years or less as of October 1, 2004 (including a floor amount for States that have small refugee populations). Of the amount proposed to be awarded, approximately $6.4 million is expected to be awarded to Wilson/Fish Alternative Projects providing social services. As previously stated, $2,000,000 will be allocated as a set-aside for citizenship and naturalization preparation services for the elderly.

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that ''funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.''

As established in the FY 1992 social services notice published in the **Federal Register** on August 29, 1991, section I, ''Allocation Amounts'' (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

Population To Be Served and Allowable Services

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (*see* Footnote 1 on page 1 for service populations). In addition, persons granted asylum are eligible for refugee benefits and services from the date that asylum was granted (*See* ORR State Letter No. 00–12, effective June 15, 2000, as clarified by ORR State Letter No. 00–15, August 3, 2000). Victims of a severe form of trafficking who have received a certification or eligibility letter from ORR and certain other specified family members are eligible from the date on the certification letter (see ORR State Letter No. 01–13, May 3, 2001, as modified by ORR State Letter No. 02–01, January 4, 2002, and ORR State Letter, No.04–12, June 18, 2004).

Services to refugees must be provided in accordance with the rules of 45 CFR part 400 Subpart I—Refugee Social Services. Although the allocation formula is based on the 3-year refugee population (FYs 2002, 2003, and 2004), States may provide services to refugees who have been in the country up to 60 months (5 years), with the exception of referral and interpreter services and citizenship and naturalization preparation services for which there is no time limitation (45 CFR 400.152(b)).

Under waiver authority at 45 CFR 400.300, the Director of ORR may issue a waiver of the limitation on eligibility for social services contained in 45 CFR 400.152(b). There is no blanket waiver of this provision in effect for FY 2004. States may apply for a waiver of 45 CFR 400.152(b) in writing to the Director of ORR. Each waiver request will be reviewed based on supporting data and information provided. The Director of ORR will approve or disapprove each waiver request as expeditiously as possible.

A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections that the State may wish to provide must be submitted to and approved by the Director of ORR as required under 45 CFR 400.155(h).

Service Priorities

In accordance with 45 CFR 400.147, States are required to provide social services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) All newly arriving refugees during their first year in the U.S. who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence. In order for refugees to leave Temporary

Assistance for Needy Families (TANF) quickly, States should, to the extent possible, ensure that all newly arriving refugees receive refugee-specific services designed to address the employment barriers that refugees typically face.

ORR encourages States to re-examine the range of services they currently offer to refugees. Those States that have had success in helping refugees achieve early employment may find it to be a good time to expand beyond the provision of basic employment services and address the broader needs that refugees have in order to enhance their ability to maintain financial security and to successfully integrate into the community. Other States may need to reassess the delivery of employment services in light of local economic conditions and develop new strategies to better serve the newly arriving refugee groups.

States should also be aware that ORR will make social services formula funds available to pay for social services that are provided to refugees who participate in Wilson/Fish projects which can be administered by public or private non-profit agencies, including refugee, faith-based and community organizations. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate standing notice with respect to applications for such projects. The notice can be found in the **Federal Register** [Volume 69, FR 65, pages 17692–17700, (April 5, 2004)].

States are encouraged to consider eligible sub-recipients for formula social service funds, including public or private non-profit agencies such as, refugee, faith-based, and community organizations.

II. Comments and Response

Note: This section is reserved for discussion of comments and response in the Final Notice.

III. Allocation Formulas

Of the funds available for FY 2005 for social services, $77,136,460 is proposed to be allocated to States in accordance with the formula specified in A. below.

A. A State's allowable formula allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by

2. The total number of refugees, Cuban/Haitian entrants, parolees, and Amerasians from Viet Nam, as shown by the ORR Refugee Arrivals Data System (RADS) for FYs 2002, 2003, and 2004, and victims of severe forms of trafficking as shown by the certification and eligibility letters issued by ORR, who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated. This total also includes the total number of asylees who have been served by a State through its refugee resettlement or social services system in FYs 2002, 2003, and 2004. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 2004, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the proposed allocation of funds in Fiscal Year 2005 for the formula social service allocation are based on data on refugee arrivals for FYs 2002, 2003, and 2004 from the ORR Refugee Arrivals Data System (RADS), adjusted as of September 30, 2004, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Viet Nam, Cuban and Haitian entrants, Havana parolees, asylees, and trafficking victims. Data on the number of asylees who have been served in FYs 2002, 2003, and 2004 through the refugee resettlement program or social service system are provided by States. Data on trafficking victims are taken from the total number of trafficking victims' certification and eligibility letters issued by ORR.

Consistent with States' requests, in Fiscal Year 2005, ORR implemented a new voluntary process for data submission by States prior to issuance of the proposed allocations in an effort to minimize adjustments of final allocations. Prior to the publication of the proposed notice, the request for voluntary data submission was sent to States via e-mail on December 20, 2004 with a due date of February 8, 2005. States were requested to follow the standardized EXCEL format suggested by ORR to submit the data on asylees, entrants, and/or family members of victims of a severe form of trafficking served during FY 2004. Data for each population group was to be submitted separately on an EXCEL spreadsheet. The spreadsheet(s) was due at ORR on February 8, 2005, as an attachment to an e-mail to: *lbussert@acf.hhs.gov.* States that did not respond to the December 20, 2004 request are hereby notified that ORR will accept data from States in response to this proposed social services notice. Data to be submitted by States will be verified by ORR against the ORR arrival database (RADS), and adjustments may be included, as a result of this process, in the final notice of social service allocation for FY 2005. Deadline for submission of data or comments to ORR is 30 days from publication of this proposed notice. This is the final opportunity for States to submit data to ORR on the number of asylees, entrants or family members of trafficking victims served during FY 2004. The EXCEL format for data submission is available from Kathy Do by e-mail at *Kdo@acf.hhs.gov.*

As previously stated, ORR proposed formula social service allocations for the States for FY 2005 are based on the numbers of refugee arrivals, Amerasians, entrants, Havana parolees, asylees, and victims of a severe form of trafficking. Refugee numbers are based upon the arrivals during the preceding FYs 2002, 2003, and 2004 adjusted as of September 30, 2004, for estimated secondary migration. The proposed allocations also reflect adjustments for family members of victims of severe forms of trafficking served in FY 2004, and asylees who have been served by the States in FYs 2002, 2003, and 2004 through the refugee resettlement program or social service system. Data on Havana parolees who entered the U.S. through a controlled process at the Port of Miami are also included in the proposed allocations. Data on entrants includes information on those who arrived in the U.S. through Miami, data on entrants submitted by States on entrants who arrived in the U.S. through a land border or port of entry other than Miami, and information on those who have migrated from southern Florida and are receiving services in another State.

The data on secondary migration are based on data submitted by all participating States on Form ORR–11 on refugee secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 2004. The total migration reported by each State was due to ORR on January 5, 2005. Asylees and victims of trafficking data are not

captured on the Form ORR–11, therefore, State's data on asylees, victims of trafficking and their family members accessing benefits and services are used to ensure current information for allocations purposes. The total migration data from Form ORR–11 is summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure is applied to the State's total arrival figure, resulting in a revised ORR population estimate. ORR calculations are developed separately for refugees and entrants and then combined into a total proposed 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures. Havana parolees (HP's) are enumerated in a separate column in Table 1, below, because they are tabulated separately from other entrants. Havana parolee arrivals for all States are based on actual data.

Table 1 (attached) shows the estimated 3-year populations, as of October 1, 2004, of refugees (col. 1), entrants (col. 2), asylees (col. 3), Havana parolees (col.4), victims of trafficking (col. 5), total population, (col. 6), the proposed formula amounts which the population yields (col. 7), proposed allocation (col. 8), elderly set-aside (col. 9), and total proposed allocations (col. 10).

V. Proposed Allocation Amounts

Funding subsequent to the publication of this proposed notice will be contingent upon the submission and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations.

Table 1, attached, represents the FY 2005 proposed social service formula allocations.

VI. Paperwork Reduction Act

This notice does not create any reporting or record keeping requirements requiring OMB clearance.

Dated: May 19, 2005.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT/ASYLEE/PAROLEE/TRAFFICKING VICTIM POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE RESETTLEMENT PROGRAM AND PROPOSED SOCIAL SERVICE FORMULA ALLOCATIONS FOR FY 2005 (ADJUSTED FOR SECONDARY MIGRATION BASED ON THE ORR–11)

[Proposed FY 2005 Social Services Formula Notice]

State	Refugees [1]	Entrants	Asylees [2]	Havana parolees [3]	Trafficking victims	Total population	Proposed formula amount	Proposed allocation	Elderly Set-aside	Total proposed allocation
Alabama [4]	120	0	0	23	.....	143	61,999	90,321	2,342	92,663
Alaska [4]	102	0	31	0	.....	133	57,663	85,985	2,229	88,214
Arizona	3,564	510	258	14	7	4,353	1,887,272	1,887,272	48,933	1,936,205
Arkansas	9	1	5	1	.....	16	6,937	75,000	1,945	76,945
California [4]	14,773	26	3,406	79	64	18,348	7,954,897	7,954,895	206,254	8,161,149
Colorado [4]	1,677	1	199	9	.....	1,886	817,688	817,688	21,201	838,889
Connecticut	959	12	103	30	.....	1,104	478,646	478,646	12,410	491,056
Delaware	87	5	0	0	.....	92	39,887	75,000	1,945	76,945
Dist. of Columbia	0	0	579	1	3	583	252,763	252,763	6,554	259,317
Florida	6,911	11,272	7,806	30,591	27	56,607	24,542,335	24,542,335	636,336	25,178,671
Georgia	4,312	15	331	119	5	4,782	2,073,267	2,073,267	53,756	2,127,023
Hawaii	12	0	0	0	8	20	8,671	75,000	1,945	76,945
Idaho [4]	819	2	0	1	3	825	357,684	357,684	9,274	366,958
Illinois	3,019	14	0	63	13	3,109	1,347,927	1,347,927	34,949	1,382,876
Indiana	773	1	0	12	.....	786	340,775	340,775	8,836	349,611
Iowa	1,122	0	6	0	.....	1,128	489,052	489,052	12,680	501,732
Kansas	263	0	0	11	.....	274	118,794	118,794	3,080	121,874
Kentucky [4]	1,243	1,284	36	31	1	2,595	1,125,079	1,125,079	29,171	1,154,250
Louisiana	339	99	9	48	.....	495	214,610	214,610	5,564	220,174
Maine	862	0	0	1	.....	863	374,159	374,159	9,701	383,860
Maryland	2,009	6	1,567	14	6	3,602	1,561,671	1,561,671	40,491	1,602,162
Massachusetts [4]	2,832	91	514	18	4	3,459	1,499,672	1,499,672	38,884	1,538,556
Michigan	1,835	607	0	52	5	2,499	1,083,458	1,083,458	28,092	1,111,550
Minnesota	9,543	1	164	1	3	9,712	4,210,701	4,210,701	109,175	4,319,876
Mississippi	24	5	0	8	.....	37	16,042	75,000	1,945	76,945
Missouri	2,238	20	119	10	3	2,390	1,036,200	1,036,200	26,867	1,063,067
Montana	38	0	0	0	.....	38	16,475	75,000	1,945	76,945
Nebraska	815	1	0	2	.....	818	354,649	354,649	9,195	363,844
Nevada [4]	676	716	0	69	4	1,465	635,160	635,160	16,468	651,628
New Hampshire	960	0	1	1	2	964	417,949	417,949	10,837	428,786
New Jersey	576	164	0	375	7	1,122	486,450	486,450	12,613	499,063
New Mexico	141	282	0	3	.....	426	184,695	184,695	4,789	189,484
New York	6,466	1,262	0	115	106	7,949	3,446,341	3,446,341	89,357	3,535,598
North Carolina	3,073	9	418	65	1	3,566	1,546,063	1,546,063	40,086	1,586,149
North Dakota [4]	457	0	6	0	.....	463	200,737	200,737	5,205	205,942
Ohio	4,801	1	180	6	2	4,990	2,163,447	2,163,447	56,094	2,219,541
Oklahoma	169	0	36	1	52	258	111,858	11,858	2,900	114,758
Oregon	2,715	420	66	3	1	3,205	1,389,549	1,389,549	36,028	1,425,577
Pennsylvania	3,686	540	494	33	5	4,758	2,062,862	2,062,862	53,486	2,116,348
Rhode Island	477	5	55	0	.....	537	232,820	232,820	6,037	238,857
South Carolina	292	0	.....	16	.....	308	133,535	133,535	3,462	136,997
South Dakota [4]	814	0	0	4	.....	818	354,649	354,649	9,195	363,844
Tennessee	1,442	5	0	60	.....	1,507	653,370	653,370	16,941	670,311
Texas	5,365	1,337	431	99	61	7,293	3,161,928	3,161,928	81,983	3,243,911
Utah	1,327	3	90	1	.....	1,421	616,084	616,084	15,974	632,058
Vermont	397	0	10	0	.....	407	176,458	176,458	4,575	181,033
Virginia	2,451	429	332	37	12	3,261	1,413,828	1,413,828	36,658	1,450,486
Washington	9,348	0	0	7	7	9,362	4,058,956	4,058,956	105,241	4,164,197
West Virginia	7	0	0	0	.....	7	3,035	75,00	1,945	76,945
Wisconsin	2,146	1	23	3	.....	2,173	942,118	942,118	24,427	966,545
Wyoming [5]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	108,086	19,147	17,275	32,037	412	176,957	76,720,865	77,136,460	2,000,000	79,136,460

[1] Includes Amerasian immigrants. Adjusted for secondary migration.

[2] Asylee counts are submitted by States and verified by matching against data from the Department of Justice/Executive Office of Immigration Review, and the U.S. Citizenship and Immigration Service.

[3] For all years, Havana Parolee arrivals for all States are based on actual data.

[4] The allocations for the States of Alabama, Alaska, Colorado, Idaho, Kentucky, Massachusetts, Nevada, North Dakota, and South Dakota, and for the county of San Diego, California are expected to be awarded to Wilson/Fish projects.

[5] Wyoming no longer participates in the Refugee Resettlement Program.

[FR Doc. 05–10674 Filed 5–26–05; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Public Comment on the Proposed Adoption of ANA Program; Policies and Procedures

AGENCY: Administration for Native Americans (ANA).

SUMMARY: Pursuant to section 814 of the Native American Programs Act of 1974; as amended, 42 U.S.C., 2991b–1, the Administration for Native Americans (ANA) herein describes its proposed interpretive rules, general statement of policy and rules of agency procedure or practice in relation to the Social and Economic Development Strategies (SEDS) project SMART NA Communities (Strengthening Marriages and Relationships in Tribal and Native American Communities). For FY 2005, ANA reserved an amount of funding under the SEDS program to fund projects that are beneficial to the development of healthy Native American communities. ANA has decided to participate in ACF's Healthy Marriage Initiative, and intends to use the reserved SEDS funds to support projects that improve child well-being by removing barriers associated with forming and retaining healthy families and marriages in Native American communities. Under the statute, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, statements of general policy, and rule of agency procedure or practice and to give notice of the final adoption of such changes at least 30 days before the changes become effective. The notice also provides additional information about ANA's plan for administering the programs.

DATES: The deadline for receipt of comments is 30 days from date of publication in the **Federal Register**.

ADDRESSES: Comments in response to this notice should be addressed to Sheila Cooper, Director of Programs Operations, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace 8—West, Washington, DC 20447. Delays may occur in mail delivery to Federal offices; therefore, a copy of comments should be faxed to: (202) 690–7441. Comments will be available for inspection by members of the public at the Administration for Native Americans, Aerospace Center, 901 D Street, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Sheila Cooper, toll free at (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of the Native American Programs Act of 1974 (the Act), as amended, requires ANA to provide notice of its proposed interpretive rules, statements of policy and rule of agency organization, procedure or practice. These proposed clarifications, modifications and new text will appear in the ANA FY 2005 program announcements: SEDS—SMART NA Communities.

Additional Information

1. General

This SEDS SMART NA Communities program area incorporates a majority of the requirements as contained in the SEDS program announcement. There are a few instances where ANA has opted to change the request for information for this program area only. The differences are noted below.

2. Evaluation Criteria

The Impact Indicators, as established in the FY 2005 SEDS program announcement under ANA Evaluation Criteria Five, will be used for this demonstration project except for the following: (2) Number of codes or ordinances developed and implemented; (3) number of people to successfully complete a workshop/training; (8) number of community-based small businesses established or expanded; (9) identification of Tribal or Village government business, industry, energy or financial codes or ordinances that were adopted or enacted; and (10) number of micro-businesses started. ANA does not believe that the capture of this data will affect the impact or demonstrate the success of the grants. The number of suggested ANA Impact Indicators has been reduced to five indicators. (Legal authority: Section 803(a) and (d), 803B and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–2 and 2991b–3).

3. ANA Funding Restrictions

ANA will use the Funding Restrictions established under the FY 2005 SEDS program announcement, except for the following: Core Administration has been modified to remove the last sentence ''Under Alaska SEDS projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.'' and ''Projects that do not further the three interrelated ANA goals of economic development, social development and governance or meet the purpose of this program announcement.'' This demonstration project is not associated with the Alaska SEDS program area nor is it intended to interrelate to the goals of economic development, social development or governance. (Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974 as amended, 42 U.S.C. 2991b and 2991b–3 and 45 CFR 1336.33)

4. Administrative Policies

ANA will be using the administrative policies as included in the FY 2005 SEDS program announcement except: ''An applicant can have only one active ANA SEDS grant operating at any given time'' and ''Applicants proposing an Economic Development project must address the project's viability. A business plan, if applicable, must be included to describe the project's feasibility, cash flow and approach for the implementation and marketing of the business.'' Neither of these policies apply to this program. Special initiative awards such as this program will be issued a SEDS grant number and therefore an entity will be able to administer a regular SEDS award in addition to this project. Business development and the promotion of economic development are not components of this demonstration. (Legal authority: Sections 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, and 45 U.S.C. 2991b and 2991b–3).

5. Funding Thresholds

The funding threshold for this demonstration project will be $50,000.00 (floor amount) to $150,000.00 (ceiling amount) per budget period. Applications exceeding the $150,000.00 threshold will be considered non-responsive and will not be considered for funding under this announcement. (Legal authority: Sections 803(a) and (d) and 803C of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3.)

Dated: May 24, 2005.

Kimberly Romine,

Deputy Commissioner, Administration for Native Americans.

[FR Doc. 05–10660 Filed 5–26–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0226]

Food and Drug Administration Modernization Act of 1997; Modifications to the List of Recognized Standards, Recognition List Number: 012

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 012'' (Recognition List Number: 012), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of ''Modifications to the List of Recognized Standards, Recognition List Number: 012'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: *standards@cdrh.fda.gov*. This document may also be accessed on FDA's Internet site at *http://www.fda.gov/cdrh/fedregin.html*. See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 012 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 12720 Twinbrook Pkwy., MD 20857, 301–827–0021.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled ''Recognition and Use of Consensus Standards.'' The notice described how FDA will implement its standard recognition program and provided the initial list of FDA recognized consensus standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617), July 12, 1999 (64 FR 37546), November 15, 2000 (65 FR 69022), May 7, 2001 (66 FR 23032), January 14, 2002 (67 FR 1774), October 2, 2002 (67 FR 61893), April 28, 2003 (68 FR 22391), March 8, 2004 (69 FR 10712), June 18, 2004 (69 FR 34176), and October 4, 2004 (69 FR 59240), FDA modified its initial list of FDA recognized consensus standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA. The agency maintains ''hypertext markup language'' (HTML) and ''portable document format'' (PDF) versions of the list of FDA recognized consensus standards. Both versions are publicly accessible at the agency's Internet site at *http://www.fda.gov/cdrh/stdsprog.html*. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to Recognition List Number: 012

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA recognized consensus standards in the agency's searchable database. FDA will use the term ''Recognition List Number: 012'' to identify these current modifications.

In table 1 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 1.

Old Item No.	Standard	Change	Replacement Item No.
A. Anesthesia			
3	ASTM F1161–88, Standard Specification for Minimum Performance and Safety Requirements for Components and Systems of Anesthesia Gas Machines	Contact person	
4	ASTM F1242–96, Standard Specification for Cuffed and Uncuffed Tracheal Tubes	Withdrawn	
7	ASTM F1627–95, Standard Specification for Pediatric Tracheostomy Tubes	Withdrawn	

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
9	IEC 60601–2–12 (2001–10), Medical Electrical Equipment—Part 2–12: Particular Requirements for the Safety of Lung Ventilators—Critical Care Ventilators	Withdrawn and replaced with newer version	60
15	ISO 5361–4: 1987, Tracheal Tubes—Part 4: Cole Type	Contact person	
18	ISO 8359: 1996, Oxygen Concentrators for Medical Use—Safety Requirements	Contact person	
19	ISO 8382: 1988, Resuscitators Intended for Use With Humans	Contact person	
20	ISO 9703–1: 1992, Anesthesia and Respiratory Care Alarm Signals—Part 1: Visual Alarm Signals	Withdrawn	
21	ISO 9703–2: 1994, Anesthesia and Respiratory Care Alarm Signals—Part 2: Auditory Alarm Signals	Withdrawn	
30	IEC 60601–2–13 (2003–05), Medical Electrical Equipment—Part 2–13: Particular Requirements for the Safety and Essential Performance of Anesthetic Systems	Withdrawn and replaced with newer version	61
31	ISO 5356–1: 2004, Anaesthetic and Respiratory Equipment—Conical Connectors—Part 1: Cones and Sockets	Withdrawn and replaced with newer version	62
35	ISO 5361: 1999, Anaesthetic and Respiratory Equipment—Tracheal Tubes and Connectors	Contact person	
38	CGA V–1: 2003, Standard for Compressed Gas Cylinder Valve Outlet and Inlet Connections	Withdrawn and replaced with newer version	63
42	ISO 5360: 1993, Anaesthetic Vaporizers—Agent Specific Filling Systems	Contact person	
44	ISO 5366–1: 2000, Anaesthetic and Respiratory Equipment—Tracheostomy Tubes—Part 1: Tubes and Connectors for Use in Adults	Contact person and type of standard	
50	ASTM F920–93 (1999), Standard Specification for Minimum Performance and Safety Requirements for Resuscitators Intended for Use With Humans	Contact person	
52	ASTM F1463–93 (1999), Standard Specification for Alarm Signals in Medical Equipment Used in Anesthesia and Respiratory Care	Contact person	
53	ASTM F1464–93 (1999), Standard Specification for Oxygen Concentrators for Domiciliary Use	Contact person	
54	ASME PVHO–1–2002–2003, Safety Standard for Pressure Vessels for Human Occupancy	Withdrawn and replaced with newer version	64
55	ASTM F1054–01, Standard Specification for Conical Fittings	Contact person	
57	ASTM F1101–90 (2003)e1, Standard Specification for Ventilators Intended for Use During Anesthesia	Contact person	
59	ASTM F1456–01, Standard Specification for Minimum Performance and Safety Requirements for Capnometers	Contact person	
B. Cardiovascular/Neurology			
3	AAMI NS28: 1988/(R)1993, Intracranial Pressure Monitoring	Contact person	
18	IEC 60601–2–27 (1994), Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Electrocardiographic Monitoring Equipment	Contact person and processes affected	
43	ANSI/AAMI EC38: 1998, Ambulatory Electrocardiographs	Contact person, processes affected and extent of recognition	
C. Dental/Ear, Nose, and Throat			
61	ISO 1562: 1993, Dental Casting Gold Alloys	Contact person	
116	ISO 10139–1: 1991, Dentistry—Resilient Lining Materials for Removable Dentures—Part 1: Short-Term Materials	Date of standard	
D. General Hospital/General Plastic Surgery			

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
1	AAMI BF7: (R2002), Blood Transfusion Micro-Filters	Withdrawn and replaced with newer version	119
29	IEC 60601–2–19 1996–10, ''Amendment 1''—Medical Electrical Equipment—Part 2: Particular Requirements for Safety of Baby Incubators	Title	
32	IEC 60601–2–20 1996–10, ''Amendment 1''—Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Transport Incubators	Title	
37	ASTM F1054–01, Standard Specification for Conical Fittings	Withdrawn and replaced with newer version	120
63	ISO 8536–7–1999, Infusion Equipment for Medical Use—Part 7: Caps Made of Aluminum-Plastics Combinations for Infusion Bottles	Title	
65	ISO 8536–2–2001, Infusion Equipment for Medical Use—Part 2: Closures for Infusion Bottles	Withdrawn and replaced with newer version	121
67	ISO 8536–5–2004, Infusion Equipment for Medical Use—Part 5: Burette Type Infusion Sets for Single Use, Gravity Feed	Withdrawn and replaced with newer version	122
71	ASTM E667–03, Standard Specification for Mercury-in-Glass, Maximum Self-Registering Clinical Thermometers	Withdrawn and replaced with newer version	123
73	ASTM E1104–03, Standard Specification for Clinical Thermometer Probe Covers and Sheaths	Withdrawn and replaced with newer version	124
74	ASTM E1965–03, Standard Specification for Infrared Thermometers for Intermittent Determination of Patient Temperature	Withdrawn and replaced with newer version	125
75	ISO 8536–4–2004, Infusion Equipment for Medical Use—Part 4: Infusion Sets for Single Use, Gravity Feed	Withdrawn and replaced with newer version	126
76	ISO 1135–4–2004, Transfusion Equipment for Medical Use—Part 4: Transfusion Sets for Single Use	Withdrawn and replaced with newer version	127
78	ASTM F1670–03, Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	Withdrawn and replaced with newer version	128
79	ISO 594/2–1998, Conical Fittings With a 6% (Luer) Taper for Syringes, Needles and Certain Other Medical Equipment—Part 2: Lock Fittings	Withdrawn and replaced with newer version	129
E. Materials			
36	ASTM F1801–97 (2004), Standard Practice for Corrosion Fatigue Testing of Metallic Implant Materials	Withdrawn and replaced with newer version	103
51	ASTM F1108–04, Standard Specification for Titanium-6Aluminum-4Vanadium Alloy Castings for Surgical Implants (UNS R56406)	Withdrawn and replaced with newer version	104
69	Title: ISO 5832–10: 1996, Implants for Surgery—Metallic Materials—Part 10: Wrought Titanium 5-Aluminum 2,5-Iron	Withdrawn	
70	Title: ASTM F2052–02, Standard Test Method for Measurement of Magnetically Induced Displacement Force on Medical Devices in the Magnetic Resonance Environment	Error in October 4, 2004 FEDERAL REGISTER Notice (69 FR 59240) (Recognition List Number: 011) [Docket No. 2004N–0226]—not withdrawn	70
96	ASTM F1635–04(a), Standard Test Method for In Vitro Degradation Testing of Hydrolytically Degradable Polymer Resins and Fabricated Forms for Surgical Implants	Withdrawn and replaced with newer version	105
F. Ophthalmic			
5	ISO 9363–1: 1994, Optics and Optical Instruments—Contact Lenses—Determination of Cytotoxicity of Contact Lens Material—Part 1: Agar Overlay Test and Growth Inhibition Test	Withdrawn	

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
14	ANSI Z80.20–2004, Ophthalmics—Contact Lenses—Standard Terminology, Tolerances, Measurements and Physicochemical Properties	Withdrawn and replaced with newer version	34
15	ISO 9394:1998, Ophthalmic Optics—Contact Lenses and Contact Lens Care Products—Determination of Biocompatibility by Ocular Study Using Rabbit Eyes	Title	
30	ANSI Z80.7–2002, Ophthalmics—Intraocular Lenses	Title	
G. Radiology			
1	ANSI PH 2.43–1982, Method for Sensitometry/Medical X-Ray Screen-Film	Title	
5	ANSI PH 2.50–1983, Method/Sensitometry Direct-Exposure Medical/Dental	Title	
7	IEC/ISO 10918–1: 1994, Information Technology—Digital Compression and Coding of Continuous-Tone Still Images—Part 1: Requirements and Guidelines	Title	
8	IEC 60336 (R1993), X-Ray Tube Assemblies for Medical Diagnosis—Characteristics of Focal Spots	Title and standards development organization	
14	NEMA MS 5–2003, Determination of Slice Thickness in Diagnostic Magnetic Resonance Imaging	Withdrawn and replaced with newer version	125
22	IEC NEMA XR5–1992 (R1999), Measurement of Dimensions and Properties of Focal Spots of Diagnostic X-Ray Tubes	Withdrawn	
23	NEMA XR 10–1986 (R1992, R1998), Measurement of the Maximum Symmetrical Radiation Field From a Rotating Anode X-Ray Tube Used for Medical Diagnosis	Contact person, title, and standards development organization	
33	IEC 60601–2–1: 1998, Medical Electrical Equipment—Part 2: Particular Requirements for Medical Electron Accelerators in the Range 1 MeV to 50 MeV	Withdrawn	
36	IEC 60601–2–9 (1996–10), Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Patient Contact Dosimeters Used in Radiotherapy With Electrically Connected Radiation Detectors—ed. 2.0	Title	
40	IEC 60601–2–28: 2003, Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of X-Ray Source Assemblies and X-Ray Tube Assemblies for Medical Diagnosis—ed. 1.0	Withdrawn and replaced with newer version	126
42	IEC 60601–2–32: 2003, Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Associated Equipment of X-Ray Equipment—ed. 1.0	Withdrawn and replaced with newer version	127
50	IEEE N42.13–1993, Calibration and Usage of "Dose Calibrator" Ionization Chambers for the Assay of Radionuclides	Withdrawn and replaced with newer version	128
52	UL 544 (1998), Standard for Medical and Dental Equipment—ed. 4.0	Title	
58	ANSI N43.6–1997, Sealed Radioactive Sources, Classification	Title and standards development organization	
61	UL 122 (1999), Standard for Photographic Equipment—ed. 4.0	Title	
62	UL 187 (1998), Standard for X-Ray Equipment—ed. 7.0	Title	
74	NEMA MS 7–1998, Measurement Procedure for Time-Varying Gradient Fields (dB/dt) for Magnetic Resonance Imaging Systems	Withdrawn	
75	NEMA NU 1–2004, Performance Measurements of Scintillation Cameras	Withdrawn and replaced with newer version	129
83	IEC 60601–2–37 2004, Medical Electrical Equipment—Part 2–37: Particular Requirements for the Safety of Ultrasonic Medical Diagnostic and Monitoring Equipment Consolidated, ed. 1.1	Withdrawn and replaced with newer version	130
87	IEC 61217 2003, Radiotherapy Equipment—Coordinates, Movements and Scales Consolidated, ed. 1.1	Withdrawn and replaced with newer version	131

TABLE 1.—Continued

Old Item No.	Standard	Change	Replacement Item No.
90	IEC 60601–2–1 (1998–06), Medical Electrical Equipment—Part 2–1: Particular Requirements for the Safety of Electron Accelerators in the Range 1 MeV to 50 MeV	Title	
91	IEC 60601–2–8 (1997–08), Amendment 1—Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Therapeutic X-Ray Equipment Operating in the Range 10 kV to 1 MV	Title	
98	IEC 60731 (2002–06), Amendment 1—Medical Electrical Equipment—Dosimeters With Ionization Chambers as Used in Radiotherapy	Withdrawn and replaced with newer version	132
120	IEC 60601–2–44 (2002–11), Medical Electrical Equipment—Part 2–44: Particular Requirements for the Safety of X-Ray Equipment for Computed Tomography—ed. 2.1	Title	
H. Sterility			
121	ASTM D4169–04a, Standard Practice for Performance Testing of Shipping Containers and Systems	Extent of recognition	
123	ASTM F2096–04, Standard Test Method for Detecting Gross Leaks in Medical Packaging by Internal Pressurization (Bubble Test)	Title	
135	ANSI/AAMI ST63: 2002, Sterilization of Health Care Products—Requirements for the Development, Validation and Routine Control of an Industrial Sterilization Process for Medical Devices—Dry Heat	Title	

III. Listing of New Entries

The listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 012, follows:

TABLE 2.

Item No.	Title of Standard	Reference No. and Date
A. General Hospital/General Plastic Surgery		
114	Pen-Injectors for Medical Use—Part 1: Pen-Injectors—Requirements and Test Methods	ISO 11608–1: 2000
115	Pen-Injectors for Medical Use—Part 2: Needles—Requirements and Test Methods	ISO 11608–2: 2000
116	Pen-Injectors for Medical Use—Part 3: Finished Cartridges—Requirements and Test Methods	ISO 11608–3: 2000
117	Standard Specification for Blood/Intravenous Fluid/Irrigation Fluid Warmers	ASTM F2172–02
118	Standard Specification for Circulating Liquid and Forced Air Patient Temperature Management Devices	ASTM F2196–02
B. Radiology		
121	Ultrasonics—Surgical Systems—Measurement and Declaration of the Basic Output Characteristics, ed. 1.0	IEC 61847: 1998
122	Medical Electrical Equipment—Requirements for the Safety of Radiotherapy Treatment Planning Systems, ed. 1.0	IEC 62083: 2000
123	Ultrasonics—Physiotherapy Systems—Performance Requirements and Methods of Measurement in the Frequency Range 0.5 MHz to 5 MHz, ed. 1.0	IEC 61689: 1996
C. Sterility		
144	Standard Test Method for Linear Measurement Using Precision Steel Rule	ASTM F2203–02$^{\varepsilon 1}$
145	Standard Practice for Coating/Adhesive Weight Determination	ASTM F2217–02
146	Standard Test Method of Leaks in Non-Sealed and Empty Medical Packaging Trays by CO_2 Tracer Gas Method	ASTM F2227–02
147	Standard Test Method for Non-Destructive Detection of Leaks in Medical Packaging Which Incorporates Porous Barrier Material by CO_2 Tracer Gas Method	ASTM F2228–02

TABLE 2.—Continued

Item No.	Title of Standard	Reference No. and Date
148	Standard Practice for Evaluation of Chemical Resistance of Printed Inks and Coatings on Flexible Packaging Materials	ASTM F2250–03
149	Standard Test Method for Thickness Measurement of Flexible Packaging Materials	ASTM F2251–03$^{\varepsilon 1}$
150	Standard Practice for Evaluating Ink or Coating Adhesion to Flexible Packaging Materials Using Tape	ASTM F2252–03
151	Standard Test Method for Nondestructive Detection of Leaks in Packages by Vacuum Decay Method	ASTM F2338–04

IV. List of Recognized Standards

FDA maintains the agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*.

FDA will incorporate the modifications and minor revisions described in this document into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

In order to receive ''Guidance on the Recognition and Use of Consensus Standards'' via your fax machine, call the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 321 followed by the pound sign. Follow the remaining voice prompts to complete your request.

You may also obtain a copy of ''Guidance on the Recognition and Use of Consensus Standards'' by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this document announcing ''Modification to the List of Recognized Standards, Recognition List Number: 012'' will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/cdrh*.

You may access ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable database for FDA recognized consensus standards through the hyperlink at *http://www.fda.gov/cdrh/stdsprog.html*.

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at *http://www.fda.gov/cdrh/fedregin.html*.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Two copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 012. These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: May 16, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–10626 Filed 5–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0199]

International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on Specifications: Test Procedures and Acceptance Criteria for New Veterinary Drug Substances and New Medicinal Products: Chemical Substances; Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comments of a draft guidance document for industry (#176) entitled ''Specifications: Test Procedures and Acceptance Criteria for New Veterinary Drug Substances and New Medicinal Products: Chemical Substances'' (VICH GL39). This draft guidance has been developed for veterinary use by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is intended to assist to the extent possible, in the establishment of a single set of recommended global

specifications for new veterinary drug substances and medicinal products. It provides guidance through recommendations on the setting and justification of acceptance criteria and the selection of test procedures for new drug substances of synthetic chemical origin, and new medicinal products produced from them, which have not been registered previously in the United States, the European Union, or Japan.

DATES: Submit written or electronic comments on the draft guidance by June 27, 2005, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Dennis Bensley, Center for Veterinary Medicine, (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956, e-mail: *dbensley@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Chemical Substance

The VICH Steering Committee held a meeting in August 2004 and agreed that the draft guidance document entitled ''Specifications: Test Procedures and Acceptance Criteria for New Veterinary Drug Substances and New Medicinal Products: Chemical Substances'' (VICH GL39) should be made available for public comment. This draft VICH guidance addresses specifications, i.e., those tests, procedures, and acceptance criteria which play a major role in assuring the quality of the new veterinary drug substance and medicinal product at release and during shelf life. FDA and the VICH Safety Working Group will consider comments about the draft guidance document. Information collection is covered under OMB control number 0910–0032.

III. Significance of Guidance

This draft document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH document have been substituted with ''should.'' Similarly, words such as ''require'' or ''requirement'' have been replaced by ''recommend'' or ''recommendation'' as appropriate to the context. The draft VICH guidance (#176) is consistent with the agency's current thinking on the new veterinary drug substances and medicinal products. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Comments may be submitted electronically on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this Internet site, select Docket No. 2005D–0199 entitled ''Specifications: Test Procedures and Acceptance Criteria for New Veterinary Drug Substances and New Medicinal Products: Chemical Substances'' (VICH GL39), and follow the directions.

Copies of the draft guidance document entitled ''Specifications: Test Procedures and Acceptance Criteria for New Veterinary Drug Substances and New Medicinal Products: Chemical Substances'' (VICH GL39) may be obtained on the Internet from the Center for Veterinary Medicine's home page at *http://www.fda.gov/cvm*.

Dated: May 23, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10624 Filed 5–24–05; 11:50 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0200]

International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on Specifications: Test Procedures and Acceptance Criteria for New Biotechnological/Biological Veterinary Medicinal Products; Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document for industry (#177) entitled ''Specifications: Test Procedures and Acceptance Criteria for New Biotechnological/Biological Veterinary Medicinal Products'' (VICH GL40). This draft guidance has been developed for veterinary use by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is intended to provide general principles through recommendations on the setting and justification, to the extent possible, of a uniform set of international specifications for biotechnological and biological products to support new marketing applications.

DATES: Submit written or electronic comments on the draft guidance by June 27, 2005, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Dennis Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956, e-mail: *dbensley@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Biotechnological/Biological Veterinary Medicinal Products

The VICH Steering Committee held a meeting in August 2004 and agreed that the draft guidance document entitled ''Specifications: Test Procedures and Acceptance Criteria for New Biotechnological/Biological Veterinary Medicinal Products,'' (VICH GL40) should be made available for public comment. This draft VICH guidance document provides general principles through recommendations on the setting and justification, to the extent possible, of a uniform set of international specifications for biotechnological and biological products to support new marketing applications. The recommendations in this document apply to products composed of well-characterized proteins and polypeptides, and their derivatives which are isolated from tissues, body fluids, cell cultures, or produced using recombinant deoxyribonucleic acid (r-DNA) technology. Thus, the document covers the generation and submission of specifications for products such as cytokines, growth hormones and growth factors, insulins, and monoclonal antibodies. This document does not cover antibiotics, heparins, vitamins, cell metabolites, DNA products, allergenic extracts, vaccines, cells, whole blood, and cellular blood components.

FDA and the VICH Safety Working Group will consider comments about the draft guidance document. Information collection is covered under OMB control number 0910–0032.

III. Significance of Guidance

The draft guidance document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, mandatory

words such as ''must,'' ''shall,'' and ''will'' in the original VICH document have been substituted with ''should.'' Similarly, words such as ''require'' or ''requirement'' have been replaced by ''recommend'' or ''recommendation'' as appropriate to the context.

The draft VICH guidance (#177) is consistent with the agency's current thinking on the subject matter. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may also be submitted via the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this Internet site, select Docket No. 2005D–0200 entitled ''Specifications: Test Procedures and Acceptance Criteria for New Biotechnological/Biological Veterinary Medicinal Products'' (VICH GL40) and follow the directions.

Copies of the draft guidance document entitled ''Specifications: Test Procedures and Acceptance Criteria for New Biotechnological/Biological Veterinary Medicinal Products'' (VICH GL40) may be obtained on the Internet from the Center for Veterinary Medicine home page at *http://www.fda.gov/cvm*.

Dated: May 23, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10625 Filed 5–24–05; 11:50 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2005

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001(a)) and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2005 for Medicare and Medicaid Beneficiaries and Beneficiaries of other Federal Agencies. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements. Public Law 106–554, dated December 21, 2000, authorized IHS facilities to file Medicare Part B claims with the carrier for payment for physician and certain other practitioner services provided on or after July 1, 2001.

Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)

Calendar Year 2005

Lower 48 States—$1,542
Alaska—$2,032

Outpatient Per Visit Rate (Excluding Medicare)

Calendar Year 2005

Lower 48 States—$223
Alaska—$391

Outpatient Per Visit Rate (Medicare)

Calendar Year 2005

Lower 48 States—$181
Alaska—$371

Medicare Part B Inpatient Ancillary Per Diem Rate

Calendar Year 2005

Lower 48 States—$312
Alaska—$635

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2005 Rates

Consistent with previous annual rate revisions, the Calendar Year 2005 rates will be effective for services provided on/or after January 1, 2005 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Dated: May 20, 2005

Charles W. Grimm,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 05–10650 Filed 5–26–05; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21202]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number: 1625–0018

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR comprises (1) 1625–0018, Official Logbook. Before submitting the ICR to OMB, the Coast Guard is inviting comments on it as described below.

DATES: Comments must reach the Coast Guard on or before July 26, 2005.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2005–21202] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received

from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone 202–267–2326, or fax 202–267–4814, for questions on these documents; or telephone Ms. Andrea M. Jenkins, Program Manager, Docket Operations, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–21202], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Information Collection Requests

1. *Title:* Official logbook.

OMB Control Number: 1625–0018.

Summary: The Official Logbook contains information about the voyage, the vessel's crew, drills, and operations conducted during the voyage. Official Logbook entries identify all particulars of the voyage, including the name of the ship, official number, port of registry, tonnage, names and merchant mariner document numbers of the master and crew, the nature of the voyage, and class of ship. In addition, it also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Logbooks, and miscellaneous entries.

Need: Title 46, United States Code (USC) 11301 requires most merchant vessels to maintain an Official Logbook. The manner of making entries and penalties are set forth in 46 U.S.C. 11302 and 11303. The Official Logbook contains information about the vessel, voyage, and crew. Lack of these particulars would make it difficult for a seaman to verify vessel employment and wages, and for the Coast Guard to verify compliance with laws and regulations concerning vessel operations and safety procedures. The Official Log serves as an official record of recordable events transpiring at sea such as births, deaths, marriages, and disciplinary actions. Absent the Official Log, there would be no official civil record of these events. The courts accept log entries as proof that the logged event occurred. If this information was not collected, the Coast Guard's commercial vessel safety program would suffer, as there would be no official record of U.S. merchant vessel voyages. Similarly, those seeking to prove that an event occurred would not have any record available.

Respondents: Shipping Companies.

Frequency: On occasion.

Burden Estimate: The estimated burden remains the same, 1,750 hours a year.

Dated: May 19, 2005.

Dr. Nathaniel Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–10589 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–20457]

Collection of Information under Review by Office of Management and Budget (OMB): 1625–0013, 1625–0032, 1625–0037, 1625–0041, and 1625–0042.

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded five Information Collection Reports (ICRs)—(1) 1625–0013, Plan Approval and Records for Load Lines; (2) 1625–0032, Vessel Inspection Related Forms and Reporting Requirements Under Title 46 U.S. Code; (3) 1625–0037, Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers; (4) 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates, and (5) 1625–0042, Requirements for Lightering of Oil and Hazardous Material Cargoes—abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before June 27, 2005.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2005–20457] or OIRA more than once, please submit

them by only one of the following means:

(1) (a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2) (a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4) (a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 267–2326 or fax (202) 267–4814, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the Information Collection Reports (ICRs) addressed. Comments to DMS must contain the docket number of this request, [USCG 2005–20457]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the June 27, 2005.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–20457], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice required by 44 U.S.C. 3506(c)(2) (70 FR 11018, March 7, 2005). That notice elicited no comments.

Information Collection Request

1. *Title:* Plan Approval and Records for Load Lines.

OMB Control Number: 1625–0013.

Type of Request: Extension.

Affected Public: Owners and operators of vessels.

Forms: 88 USA LL, A21 HSSC LL–EXEMPT, LL 14–A, LL 18–E, LL 40–A, LL 19, LL 13–C, LL 18–F.

Abstract: This information collection is required to ensure that certain vessels are not loaded deeper than appropriate for safety. Vessels over 150 gross tons or 79 feet in length engaged in commerce on international or coastwise voyages by sea are required to obtain a Load Line Certificate. This collection also incorporates the Great Lakes load lines rule.

Burden Estimates: The estimated burden has decreased from 1,979 hours to 1,681 hours a year.

2. *Title:* Vessel Inspection Related Forms and Reporting Requirements Under Title 46 U.S. Code.

OMB Control Number: 1625–0032.

Type of Request: Extension.

Affected Public: Owners, operators, agents and masters of vessels.

Forms: CG–841, CG–854, CG–948, CG–949, CG–950, CG–950A and CG–2832.

Abstract: This collection of information requires owners, operators, agents or masters of certain inspected vessels to obtain and/or post various forms as part of the Coast Guard's Commercial Vessel Safety Program.

Burden Estimates: The estimated burden has decreased from 1,578 hours to 1,471 hours a year.

3. *Title:* Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 1625–0037.

Type of Request: Extension.

Affected Public: Owners and operators of vessels.

Forms: CG–3585.

Abstract: This information is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under Title 46, U.S. Code. It is solely for this purpose. The affected public includes some owners or operators of large merchant vessels and all foreign-flag tankers calling at U.S. ports.

Burden Estimates: The estimated burden has decreased from 17,555 hours to 13,577 hours a year.

4. *Title:* Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates.

OMB Control Number: 1625–0041.

Type of Request: Revision.

Affected Public: Owners and operators of vessels.

Forms: CG–5352, CG–5352A, CG–5352B, CG–6047, CG–6056, CG–6056A and CG–6057.

Abstract: Required by the adoption of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), these certificates and documents are evidence of compliance with this convention for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in a foreign port.

Burden Estimates: The estimated burden has increased from 6,780 hours to 6,874 hours a year.

5. *Title:* Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 1625–0042.

Type of Request: Extension.

Affected Public: Owners and operators of vessels.

Forms: None.

Abstract: The information for this report allows the U.S. Coast Guard to provide a timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities.

Burden Estimates: The estimated burden has increased from 228 hours to 324 hours a year.

Dated: May 19, 2005.

Dr. Nathaniel S. Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–10590 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection requirement. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the use of FEMA Forms 81–92 and 81–92A, Amendments to National Flood Insurance Program Maps Application Form for Single Residential Structure or Lot (English and Spanish versions).

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) regulations, 44 CFR Parts 65 and 70, outline the data that must be submitted by an owner or lessee of the property (requester) and certified by a Licensed Land Surveyor or Registered Professional Engineer who believes the property has been incorrectly included in a Special Flood Hazard Area (SFHA). In order to remove an area from a SFHA, the requester must submit scientific or technical data demonstrating that the area is ''reasonably safe from flooding'' and not in the SFHA. SFHAs have been mapped in over 19,000 communities nationwide.

Collection of Information

Title: Instructions and Application Form for Single Lot or Structure Amendments to National Flood Insurance Program Maps.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0037.

Form Numbers: FEMA Form 81–92, Amendments to National Flood Insurance Program Maps Application Form for Single Residential Structure or Lot, (English version) and FEMA Form 81–92A (Spanish version).

Abstract: Requesters complete and Licensed Land Surveyors or Professional Engineers certify FEMA Form 81–92 or 81–92A to request that FEMA remove a single structure or a legally recorded parcel of land or portions thereof from a designated SFHA via a Letter of Map Amendment (LOMA). A SFHA is an area that would be inundated by a flood event that has a one-percent-annual-chance of being equaled or exceeded in any given year (base flood). FEMA uses the information provided in FEMA Form 81–92 or 81–92A to make a LOMA determination. A LOMA is a letter from FEMA stating that an existing structure or parcel of land that has not been elevated by fill would not be inundated by the base flood. Fill is defined as material placed to raise the ground to or above the Base Flood Elevation (BFE).

Affected Public: Individuals or households (property owners or lessees); Business or other for-profit (Licensed Land Surveyors or Professional Engineers).

Number of Respondents: 26,400.

Estimated Total Annual Burden Hours: 31,680.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)	Annualized cost all respondents
81–92 (English):					
Owners/Lessees	11,550	Annual	1.0	11,550	$157,658
Surveyors/Engineers	11,550		1.4	16,170	442,735
81–92A (Spanish):					
Owners/Lessees	1,650	Annual	1.0	1,650	22,523
Surveyors/Engineers	1,650		1.4	2,310	63,248
Total	26,400	Annual	2.4	31,680	686,164

Estimated Cost. The total estimated annual cost is $686,164.00. This estimate is based on the average annual cost per respondent as follows: owners/lessees $13.65 and surveyors/engineers is $38.33.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to the Section Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Lynch, Program Specialist, Mitigation Division at 202–646–7045 for additional information. You may contact the Records Management Section for copies of the proposed information collection at facsimile number (202) 646–3347 or e-mail address: *FEMA–Information-Collections@dhs.gov.*

Dated: May 23, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–10587 Filed 5–26–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2346–05]

RIN 1615–ZA22

Direct Mail Program for Submitting Application To Replace Permanent Resident Card, Form I–90

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: U.S. Citizenship and Immigration Services is expanding its Direct Mail Program to provide that aliens seeking to renew or replace their Permanent Resident Card using the newly revised Form I–90, Application to Replace Permanent Resident Card, must file their application at a designated lock-box facility for initial processing, instead of at their local U.S. Citizenship and Immigration Services office, Service Center, or Application Support Center. The Direct Mail Program allows U.S. Citizenship and Immigration Services to more efficiently process applications by eliminating duplicative work, maximizing staff productivity, and introducing better information management tools.

DATES: This Notice is effective May 31, 2005.

FOR FURTHER INFORMATION CONTACT: Rebecca Watson, Lockbox Project Manager, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Room 1000, Washington, DC 20529, Telephone (202) 272–1001.

SUPPLEMENTARY INFORMATION:

Background

What is the Direct Mail program?

Under the Direct Mail program, applicants for certain immigration benefits mail the designated application or petition directly to a U.S. Citizenship and Immigration Services (USCIS) processing center instead of submitting it to their local USCIS office. The purpose and strategy of the Direct Mail program have been discussed in detail in previous rulemakings and Notices (*see* 59 FR 33903, 59 FR 33985, 60 FR 22408, 61 FR 2266, 61 FR 56060, 62 FR 16607, 63 FR 891, 63 FR 892, 63 FR 13434, 63 FR 13878, 63 FR 16828, 63 FR 50584, 63 FR8688, 63 FR 8689, 64 FR 67323, 69 FR 3380, and 69 FR 4210).

What is the purpose of the Form I–90?

Form I–90 is used to apply for a replacement or renewal of Form I–551, Permanent Resident Card. The specific requirements and procedures to obtain a Permanent Resident Card can be found at 8 CFR 264.5. Approximately one million of these forms are filed annually.

Why is a Permanent Resident Card necessary?

Section 264(d) of the Immigration and Nationality Act (INA) provides that, every alien in the United States who has been registered and fingerprinted ''shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations * * *.'' Section 264(e) of the INA also provides that ''[e]very alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him * * *. Any alien who fails to comply with [these] provisions shall be guilty of a misdemeanor * * *.'' The Permanent Resident Card provides documentary evidence that the bearer has been granted lawful permanent residence in the United States and has been registered.

The specific requirements and procedures for applying to replace a permanent resident card (including renewals of expiring permanent resident cards) via submission of a Form I–90 with the required initial evidence are set forth at 8 CFR 264.5.

Explanation of Changes

Does this Notice make any changes relating to an alien's eligibility for issuance of a replacement permanent resident card?

No. This Notice only effects a change in the filing location for these applications.

Will applicants for replacement permanent resident cards be required to make a personal appearance to have their biometrics captured?

Yes, in accordance with the instructions contained on the newly revised Form I–90, applicants will be notified how to make an appointment to appear for biometrics processing. Due to new technological capabilities, USCIS is now able to store captured biometrics data to be utilized in the future. This enhancement will assist applicants by reducing the number of future visits needed to the local Application Support Center throughout the entire

immigration process. The applicants will now appear and have their photograph, fingerprints, and signature captured in this single visit. Due to the fact that USCIS is now taking photographs of applicants, there is no longer the requirement to submit photographs with the Form I–90. The biometrics fee covering this service is $70.

Which applicants for replacement or renewal of Permanent Resident Cards are affected by this Notice?

This Notice affects those aliens who are required to file for a replacement Permanent Resident Card pursuant to 8 CFR 264.5(b), for example, when:

(1) The previous card has been lost, stolen, or destroyed;

(2) The existing 10-year card is expiring within 6 months;

(3) The existing card has been mutilated;

(4) The bearer's name or other biographic information has been legally changed since the issuance of the existing card;

(5) The applicant is taking up actual residence in the United States after having been a commuter, or is a permanent resident taking up commuter status;

(6) The applicant has automatically converted to permanent resident status;

(7) The previous card issued was never received;

(8) The bearer of the card reaches the age of 14 years (unless the existing card will expire prior to the bearer's 16th birthday); or

(9) The existing card contains incorrect data on account of USCIS or former INS error.

To what address should aliens filing Form I–90 send their application?

Effective May 31, 2005, all applicants for replacement permanent resident cards (including applicants seeking to renew expiring 10-year Permanent Resident Cards) should submit their Form I–90 directly to the following address:

For United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, P.O. Box 54870, Los Angeles, CA 90054–0870.

For non-United States Postal Service (USPS) deliveries (e.g., Federal Express, UPS, or DHL): U.S. Citizenship and Immigration Services, Attention: I–90, 16420 Valley View Avenue, La Mirada, CA 90638.

Applicants should NOT submit the required initial evidence (*i.e.* your prior card or other evidence of identity) or any supporting documentation with the Form I–90. All required initial evidence and any supporting documentation must be submitted at the time of the applicant's in-person appearance at the local USCIS Application Support Center.

Which version of the Form I–90 will USCIS accept?

As of May 31, 2005, USCIS will accept Form I–90 (edition date 5–06–05, OMB 1615–0082). Any prior versions of the Form I–90, submitted after May 31, 2005, without the required biometric fee, will be rejected and returned to the applicant with accompanying fees for resubmission with the proper version of the form.

What will happen to Forms I–90 covered by this Notice that are filed at other USCIS locations?

USCIS will have a 45-day transition period, beginning from May 31, 2005, through July 15, 2005, during which it will automatically forward to the Los Angeles/La Mirada Lockbox address any Form I–90s filed at a location other than the Lockbox (*i.e.*, a local USCIS district office, Service Center or Application Support Center). Applications forwarded from other USCIS offices will be considered properly filed when receipted at the Lockbox. After the 45-day transition period, any Form I–90 received at a location other than the Lockbox address will be returned with an explanation directing the applicant to mail the application directly to the Los Angeles/La Mirada Lockbox address for processing.

How will your check be processed once it reaches the Lockbox facility?

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we (USCIS and the Lockbox facility) will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to two times.

Dated: May 24, 2005.

Eduardo Aguirre,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. 05–10708 Filed 5–25–05; 9:56 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–21]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or

(3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *ARMY:* Ms. Audrey C. Ormerod, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 601–2520; *ENERGY:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–4548; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; *NAVY:* Mr. Charles C. Cocks, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; VA: Ms. Amelia E. McLellan, Director, Real Property Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565–5398; (These are not toll-free numbers).

Dated: May 19, 2005.

Mark R. Johnston,

Director, Office of Special Needs, Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report For 5/27/05

Suitable/Available Properties

Buildings (by State)

Georgia

Bldg. 05955
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520097
Status: Unutilized
Comment: 95 sq. ft., poor condition, most recent use—dispatch, off-site use only

Bldg. 9012
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520098
Status: Unutilized
Comment: 40,442 sq. ft., poor condition, most recent use—enlisted housing, off-site use only

Bldg. 9016
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520101
Status: Unutilized
Comment: 6138 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only

Bldg. 9019
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520102
Status: Unutilized
Comment: 7243 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only

Bldgs. 9027, 9036, 9044
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520103
Status: Unutilized
Comment: Various sq. ft., poor condition, most recent use—CO HQ Bldg., off-site use only

Bldg. 9100
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520107
Status: Unutilized
Comment: 4875 sq. ft., poor condition, most recent use—BDE HQ Bldg., off-site use only

Bldgs. 9198, 9199
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520108
Status: Unutilized
Comment: 1008 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. 10642
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520111
Status: Unutilized
Comment: 176 sq. ft., poor condition, most recent use—storage shed, off-site use only

Iowa

Bldg. 00691
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 21200520113
Status: Unutilized
Comment: 2581 sq. ft., presence of asbestos/lead paint, most recent use—residential

New York

Bldg. 3
VA Medical Center
Batavia Co: Genesee NY 14020–
Landholding Agency: VA
Property Number: 97200520001
Status: Unutilized
Comment: 5840 sq. ft., needs rehab, presence of asbestos, most recent use—offices, eligible for Natl Register of Historic Places

Oklahoma

Bldgs. 01276, 01278
Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21200520119
Status: Unutilized
Comment: 1533 & 2700 sq. ft., most recent use—maintenance, off-site use only

Wisconsin

Bldg. 01567
Fort McCoy
Monroe Co: WI 54656–
Landholding Agency: Army
Property Number: 21200520122
Status: Unutilized
Comment: 112 sq. ft. shelter, off-site use only

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Bldg. 25303
Fort Rucker
Dale Co: AL 36362–
Landholding Agency: Army
Property Number: 21200520074
Status: Excess
Comment: 800 sq. ft., most recent use—airfield operations, off-site use only

Bldg. 25304
Fort Rucker
Dale Co: AL 36362–
Landholding Agency: Army
Property Number: 21200520075
Status: Excess
Comment: 1200 sq. ft., poor condition, most recent use—fire station, off-site use only

Arizona

Bldg. 13570
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520076
Status: Excess
Comment: 4000 sq. ft., most recent use—storage, off-site use only

Bldg. 22529
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520077
Status: Excess
Comment: 2543 sq. ft., most recent use—storage, off-site use only

Bldg. 22541
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520078
Status: Excess
Comment: 1300 sq. ft., most recent use—storage, off-site use only

Bldg. 30020
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520079
Status: Excess
Comment: 1305 sq. ft., most recent use—storage, off-site use only

Bldg. 30021
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520080
Status: Excess
Comment: 144 sq. ft., most recent use—storage, off-site use only

Bldgs. 80709, 80710
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520081
Status: Excess
Comment: 1231 sq. ft., most recent use—admin., off-site use only

Bldg. 90203
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520082
Status: Excess
Comment: 165 sq. ft., most recent use—storage, off-site use only

Bldg. 90311
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520083
Status: Excess
Comment: 1357 sq. ft., most recent use—storage, off-site use only

Colorado

Bldg. 06225
Fort Carson
El Paso Co: CO 80913–4001
Landholding Agency: Army
Property Number: 21200520084
Status: Unutilized
Comment: 24,263 sq. ft., most recent use—admin., off-site use only

Bldg. 06280
Fort Carson
El Paso Co: CO 80913–4001
Landholding Agency: Army
Property Number: 21200520085
Status: Unutilized
Comment: 20597 sq. ft., most recent use—gen. inst., off-site use only

Bldgs. 06281, 06282, 06283
Fort Carson
El Pase Co: CO 80913–4001
Landholding Agency: Army
Property Number: 21200520086
Status: Unutilized
Comment: 19478 sq. ft., most recent use—gen. inst., off-site use only

Georgia

Bldg. 00051
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520087
Status: Excess
Comment: 3196 sq. ft., most recent use—court room, off-site use only

Bldg. 00052
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520088
Status: Excess
Comment: 1250 sq. ft., most recent use—admin., off-site use only

Bldg. 00053
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520089
Status: Excess
Comment: 2844 sq. ft., most recent use—admin., off-site use only

Bldg. 00054
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520090
Status: Excess
Comment: 4425 sq. ft., most recent use—admin., off-site use only

Bldg. 00451
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520091
Status: Excess
Comment: 2750 sq. ft., most recent use—exchange service, off-site use only

Bldg. 00106
Fort Benning
Chattahoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520092
Status: Unutilized
Comment: 3625 sq. ft., poor condition, most recent use—snack bar, off-site use only

Bldg. 02023
Fort Benning
Chattahoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520093
Status: Unutilized
Comment: 6138 sq. ft., poor condition, most recent use—Fh Sr NCO, off-site use only

Bldg. 2750
Fort Benning
Chattachoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520094
Status: Unutilized
Comment: 3707 sq. ft., poor condition, most recent use—health clinic, off-site use only

Bldg. 2819
Fort Benning
Chattachoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520095
Status: Unutilized
Comment: 40,442 sq. ft., poor condition, off-site use only

Bldg. 2843
Fort Benning
Chattachoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520096
Status: Unutilized
Comment: 9000 sq. ft., poor condition, most recent use—auto center, off-site use only

Bldg. 9013
Fort Benning
Chattachoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520099
Status: Unutilized
Comment: 40303 sq. ft., poor condition, most recent use—enlisted housing, off-site use only

5 Bldgs.
Fort Benning 9014, 9015, 9018, 9022, 9053
Chattachoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520100
Status: Unutilized
Comment: 50620 sq. ft., poor condition, most recent use—enlisted housing, off-site use only

Bldg. 9050
Fort Benning
Chattachoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520104
Status: Unutilized
Comment: 9313 sq. ft., poor condition, most recent use—BDE HQ Bldg., off-site use only

Bldg. 9051
Fort Benning
Chattachoochee Co: GA 31905—Landholding Agency: Army

Property Number: 21200520105
Status: Unutilized
Comment: 684 sq. ft., poor condition, most recent use—health clinic, off-site use only

Bldg. 09075
Fort Benning
Chattachoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520106
Status: Unutilized
Comment: 1500 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only

Bldg. 9234
Fort Benning
Chattachoochee Co: GA 31905—Landholding Agency: Army
Property Number: 21200520109
Status: Unutilized
Comment: 1200 sq. ft., poor condition, most recent use—exchange outlet, off-site use only

Bldgs. 10039, 10041
Fort Benning
Muscogee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520110
Status: Unutilized
Comment: 2375 sq. ft., poor condition, most recent use—FH JR NCO/ENL, off-site use only

Bldg. 11326
Fort Benning
Muscogee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520112
Status: Unutilized
Comment: 9602 sq. ft., poor condition, most recent use—FH JR NCO/ENL, off-site use only

Maryland

Bldg. 0001A
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520114
Status: Unutilized
Comment: 9000 sq. ft., most recent use—storage

Bldg. 0001C
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520115
Status: Unutilized
Comment: 2904 sq. ft., most recent use—mess hall

Bldgs. 00032, 00H14, 00H24
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520116
Status: Unutilized
Comment: Various sq. ft., most recent use—storage

Bldgs. 00034, 00H016
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520117
Status: Unutilized
Comment: 400/39 sq. ft., most recent use—storage

Bldgs. 00H10, 00H12
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520118
Status: Unutilized
Comment: 2160/469 sq. ft., most recent use—vehicle maintenance

Texas

Bldg. 00127
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200520120
Status: Excess
Comment: 3753 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 00131
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200520121
Status: Excess
Comment: 2250 sq. ft., most recent use—admin., off-site use only

Unsuitable Properties

Buildings (by State)

Illinois

#903 Site 3
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520006
Status: Excess
Reason: Extensive deterioration

#951 Site 50
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520007
Status: Excess
Reason: Extensive deterioration

#993 Site 65
FERMILAB
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200520008
Status: Excess
Reason: Extensive deterioration

Oregon

Parking Lot
511 NW Broadway
Portland Co: Multnomah OR 97209–
Landholding Agency: GSA
Property Number: 54200520014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–OR–0721

[FR Doc. 05–10379 Filed 5–26–05; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 27, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Houston Zoo, Houston, Texas, PRT–104269

The applicant requests a permit to import post-mortem collected tissue samples of captive held specimens of Baird's tapir (*Tapirus bairdii*) from the Parque Summit Zoo, Panama for the purpose of scientific research.

Applicant: Mark Harrison Vanness, Houston, TX, PRT–103034

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing marine

mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Lloyd Don Whaley, Brookings, OR, PRT–101095

The applicant requests a permit to import a polar bear (Ursus maritimus) sport hunted from the Baffin Bay polar bear population in Canada prior to February 18, 1997, for personal, noncommercial use.

Dated: May 13, 2005.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–10607 Filed 5–26–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–05–1020–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The next regular meeting of the Western Montana RAC will be held July 11, 2005 at the Butte Field Office, 106 N. Parkmont, Butte, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 3 p.m. This meeting replaces the May 4 meeting, cancelled due to lack of a quorum.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the July 11 meeting, topics we plan to discuss include: The Butte Resource Management Plan travel management and proposed planning scenario, community wildfire protection plans, and elect a chair and vice-chair.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Dated: May 23, 2005.

Steven Hartmann,

Acting Field Manager.

[FR Doc. 05–10645 Filed 5–26–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Mozambique

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 05–04.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

Key Dates: Deadline for Submission of Application is July 11, 2005.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $3 million through one or more cooperative agreements to an organization or organizations to improve access to and quality of education programs as a means to combat exploitive child labor in Mozambique. Projects funded under this solicitation will provide educational and training opportunities to children as a means of removing and/or preventing them from engaging in exploitive work or the worst forms of child labor. The activities funded will complement and expand upon existing projects and programs to improve basic education in the country. Applications must respond to the entire Statement of Work outlined in this solicitation. In Mozambique, activities under these cooperative agreements will provide the direct delivery of quality basic education to working children and those at risk of entering work, and will result in their enrollment, persistence, and completion of an education or training program.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded 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 in work in Mozambique. The overall purpose of USDOL's Child Labor Education Initiative, as consistently enunciated in USDOL appropriations FY 2000 through FY 2005, is to work toward the elimination of the worst forms of child labor through the provision of basic education. Accordingly, entities applying under this solicitation must develop and implement strategies for the prevention and withdrawal of children from the worst forms of child labor, consistent with this purpose. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2005, Public Law 108–447, 118 Stat. 2809 (2004). The cooperative agreement or cooperative agreements awarded under this initiative will be managed by ILAB's International Child Labor Program (ICLP) 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 and completion in the geographical areas where children are engaged in or are most at risk of working in the worst forms of child labor.

1. Background and Program Scope

A. 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 close to U.S. $400 million in technical assistance funding to combat exploitive child labor in approximately 70 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. Convention 182 lists four categories of the worst forms of child labor, and calls for their immediate elimination:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including force or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which, by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, ILO Recommendation 190 considers the following: Work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; and work for long hours or night work where the child is unreasonably confined to the premises.

From FY 2001 to FY 2005, the U.S. Congress has appropriated over U.S. $180 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 and quality of basic education for working children and those at risk of entering work. The elimination of exploitive child labor depends, to a large extent, on improving access to, quality of, and relevance of education.

In addition to providing direct education and training opportunities to working children and those engaged in or at risk of engaging in exploitive work, the Child Labor Education Initiative has four goals:

i. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

ii. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

iii. Strengthen national institutions and policies on education and child labor; and

iv. Ensure the long-term sustainability of these efforts.

B. 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 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 and enforcement.

Although these elements and characteristics tend to exist throughout the world in areas with a high incidence of exploitive child labor, they manifest themselves in specific ways in the country of interest in this solicitation. Therefore, specific, targeted interventions are required in the country. In Mozambique, this project must provide or facilitate the delivery of educational services to at risk or working children, support the collection of data on this target population, and build the capacity of national institutions to address child labor and education issues. For this project, applicants must 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 of school and joining the labor force, and/or children still working in a particular sector) and how direct education service delivery, capacity building and policy change can be used to address particular barriers and needs. Brief background information on education and exploitive child labor in the country of interest is provided below.

For additional information on exploitive child labor in Mozambique, applicants are strongly encouraged to refer to The Department of Labor's 2004 Findings on the Worst Forms of Child Labor available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2004/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 Mozambique

In 2002, the ILO estimated that 31.9 percent of children aged 10 to 14 years in Mozambique were working. A joint Ministry of Labor and UNICEF rapid assessment survey of children under 18 working in selected areas estimated that approximately 50 percent of children begin to work before the age of 12. Eighty percent of working children are between the ages of 12 and 15 years. Children work most frequently within the context of the family economy, assisting their parents in carrying out household chores, working in the fields, or selling small goods.

In other cases, children work outside their families in factories and small mining to provide for their families. Boys are reported to work in informal trading in the streets, in markets, and at bus stations and bus stops. Many of them also work in commercial agriculture—particularly in cotton fields in the Cabo Delgado and Nampula provinces—and in fishing and forestry. Girls reportedly tend to work as domestic servants and traders, as well as in commercial agriculture. Girls are also reported to be involved in commercial sexual exploitation. There have been reports of child trafficking.

HIV/AIDS has severely impacted children participation in the worst forms of child labor in Mozambique. An estimated 420,000 children under the age of 15 have lost one or both parents to AIDS. Increasing numbers of orphans and other children affected by HIV/AIDS are dropping out of school due to their inability to pay school fees, to care for sick relatives, and to provide for their families and themselves through paid work. Children living with extended family may place an added strain on already scarce resources, making them targets of physical or emotional abuse, causing them to drop out of school, and leaving them vulnerable to labor exploitation.

According to a Ministry of Labor of Mozambique and UNICEF rapid assessment conducted in 2001, the following worst forms of child labor were found as being particularly prevalent in Mozambique:

Domestic work: Most domestic servants are girls between the ages of 13 and 15 years. Many have begun to work as young as 8 or 9 years old. Some are paid for their services in cash and others receive in kind payment. Many send their earnings to their families at the end of the month. A majority of domestic servants work 7 days a week, and are often on call for 24 hours a day.

Traders and Hawkers: Children, predominantly boys, work as traders or hawkers at the market, at bus and train stations, harbors, and ferry landings, on the streets, and soliciting door to door.

Other children work in urban areas as car washers and guards, collecting scrap metal and portering, and as taxi conductors collecting fares in minibuses. Children working in these urban settings are exposed to a variety of dangers, such as traffic accidents, car exhaust and inclement weather, harassment, and abuse.

Agriculture: Although children assisting their families in subsistence agriculture, especially low technology agriculture, are not usually exposed to serious health hazards, their work occasionally conflicts with school. In contrast, children working in commercial agriculture are significantly more vulnerable. Children work in the cotton fields in the Cabo Delgado province. Children were also found working on tea plantations in Zambezia/Gurue and in commercial fishing and seaweed cultivation. These children work long hours for extremely low wages, are exposed to harmful pesticides and adverse weather conditions, and are often out of school.

Commercial Sexual Exploitation: The number of children in prostitution is growing in both urban and rural regions such as the Maputo, Beira, and Nacala areas. A recent survey found that 69 percent of girls involved in prostitution had dropped out of school. Most work for themselves but visit bars and discos in small groups. Few girls reportedly require their clients to wear condoms, explaining that they could earn greater compensation for unprotected sex, thereby exposing themselves to a greater risk of contracting HIV/AIDS.

Primary education in Mozambique is divided into two cycles: a lower level, EP1, consisting of 5 years and a higher level, EP2, consisting of 2 years. Education is compulsory and free through the age of 12, but there is a matriculation fee for each child. Matriculation fees are considered to be prohibitive for many prospective students. The cost of additional school supplies also serves as an impediment to children's schooling. Enforcement of compulsory education laws is inconsistent because of the lack of resources and the lack of schools in upper grades. Although free books were introduced in 1996, these are in short supply. Secondary students must buy their own books.

In 2000, the gross primary enrollment rate was 91.5 percent, and the net primary enrollment rate was 54.4 percent. In 1995, the latest year for which figures are available, 46 percent of students who entered primary school reached grade five. Enrollment and drop out rates differ according to geographic location and gender. Children, particularly girls, living in the Northern and Central provinces and rural areas tend to have the lowest enrollment numbers.

Access to education is also restricted by insufficient infrastructure. About one half of the country's schools were destroyed in the 1980s and early 1990s during the civil war. Following the 1992 peace agreements, efforts were made to rebuild the education system. However, the floods in 2000 destroyed many more schools in several areas of the country and prevented more than 105,000 primary school students from attending classes. Inadequate numbers of bathrooms, including those that are gender segregated, discourage children, especially girls, from attending school. More recently, drought conditions have placed pressure on families to withdraw children from school in order to save money for food.

The quality of basic education is also of great concern in Mozambique. The ratio of students to teachers in primary schools is extremely high and expected to rise during the next decade as a result of increases in deaths among teachers due to the HIV/AIDS pandemic. Reports indicate that an average of 25 percent of children repeat one or more school years. Successive grade repetition often leads to increased drop outs.

HIV/AIDS has had an extremely negative impact on the quality of and children's access to education. The HIV/AIDS rate among teachers is higher than the national prevalence rate among people aged 15 to 49. This has resulted in teachers who are less effective in the classroom and often absent from school. Turnover is high, and schools often have to resort to hiring untrained teachers. It is estimated that AIDS could lead to a 17 percent decline in teacher numbers by 2010. HIV/AIDS-affected children that remain in school face negative social stigma from other students and teachers, as well as curriculum and teaching techniques that do not meet their special needs.

The Government of Mozambique ratified ILO Conventions 138 and 182 on June 16, 2003. The Ministry of Labor has worked with UNICEF to develop a Draft Strategy for the Eradication of Child Labor. The government is also collaborating with UNICEF and ILO-IPEC to implement a plan of action, which calls for the prevention of child labor and for the protection and rehabilitation of child workers.

The government works against child prostitution and sexual abuse through a variety of public awareness activities. The government has trained police about child prostitution and pornography and initiated a rehabilitation program for children in prostitution by providing education referrals and training opportunities. The Ministry of Women and Social Action Co-ordination is increasing the birth registration of children as a means of protecting them against abuse and exploitation. The government has also launched a program to enhance child protection laws and develop legislation to cover child trafficking. The government participates in the Campaign Against Trafficking in Children, which is establishing an assistance center to aid repatriated victims of child trafficking at the border post of Ressano Garcia.

The Government of Mozambique has developed an education sector strategic plan that includes policy support to improve girls' access and retention (through a Gender Action Plan), improving school quality, creating an enabling environment for peer education and communication among young people, and building capacity for contingency planning in response to emergencies. As a means to increase access to school and reduce drop out, the government has introduced a reformed basic education curriculum that is adapted to community and regional economic development needs.

Note to Applicants: All applicants must have country presence, or partner with an established and eligible organization within the target country.

2. Statement of Work

Taking into account the challenges of educating working children in Mozambique, the applicant must implement creative and innovative approaches to promote policies and services that will enhance the provision of educational opportunities for children involved in or at risk of

entering exploitive child labor. Projects funded under this cooperative agreement solicitation must focus on direct education service(s) delivery to targeted children, including the provision of educational services that address the specific gaps/challenges that working or at-risk children from attending or staying in school.

USDOL defines educational services and/or training opportunities as follows: (1) Non-formal or basic literacy education, as demonstrated by enrollment in educational classes provided by the program. These classes may include transitional, leveling, or literacy classes so that a child may either be mainstreamed into formal school and/or can participate in vocational training activities; (2) Vocational, pre-vocational, or skills training, as demonstrated by enrollment in training courses in order to develop a particular skill (*e.g.*, mechanics, sewing, etc); (3) Mainstreaming/ Transitioning into the formal education system, non-formal education, vocational, pre-vocational, or skills training after having received assistance from the project to enable them to enroll in such programs. The assistance provided by the project could include one or more of the following services: the provision of school meals, uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled in an education program; and (4) Formal school enrollment, by directly supporting a child's enrollment, retention, and completion in the formal school system. Similar to the assistance provided under mainstreaming, assistance provided by the project could include one or more of the following services: The provision of uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled and maintained in the formal school system.

Activities such as awareness raising and social mobilization campaigns, psychosocial services for children, improvements in curriculum, teacher training or improvements to school infrastructure are important for improving access to and quality of basic education. While grantees are encouraged to address the needs of working children in a comprehensive manner, these activities will not be considered as direct services for individual children. Rather, direct services are those that meet the basic needs of individual children that are direct beneficiaries of the project.

Through improved policies and direct education service delivery, as applicable, the expected outcomes/ results of the project are to: (1) Reduce the number of children engaged in or at risk of entering exploitive child labor, (2) increase educational opportunities and access (enrollment) for children who are at risk of, engaging in, and/or removed from exploitive child labor, particularly its worst forms; (3) encourage retention in and completion of educational programs; and (4) expand the successful transition of children from non-formal education programs into formal schools or vocational programs.

The applicant must identify a target number of urban and/or rural children engaged in or at risk engaging in exploitive and/or worst forms of child labor in Mozambique, who would be the direct beneficiaries of a Child Labor Education Initiative project, and the geographic areas of greatest need. Direct beneficiaries are children who are withdrawn or prevented from entering exploitive child labor, particularly its worst forms, by USDOL-funded projects. Children withdrawn from exploitive work are those children who were found working and no longer work as a result of a project intervention. This category also includes those children that were engaged in exploitive work and as a result of a project's intervention now work shorter hours under safer conditions. Children prevented from entering work are those children who are either siblings of (ex) working children or those children who are considered to be at high risk of engaging in exploitive work. In order to be considered withdrawn or prevented, the child must benefit from educational or training opportunities. This is measured by enrollment into school or training programs. The project's strategy must be to remove these children from or prevent them from entering exploitive child labor and to provide them with educational and other services to prevent them from engaging in such exploitive and/or worst forms of child labor in the future.

In preparing the application, in order to identify gaps, unmet needs, and opportunities that could be addressed through a USDOL Child Labor Education Initiative project, applicants must conduct a needs assessment to make a preliminary identification of the current working and educational status of the children who the applicant proposes as beneficiaries. It is expected that the information gathered during this assessment will be refined after award. The assessment, with data sources, must include information on the incidence and nature of exploitive child labor, particularly the worst forms, among target children, hours of work, age and sex distribution of the proposed beneficiaries, educational performance relative to other children, if available, and any research or other data that might indicate correlations between educational performance and hours of work. Applicants are also encouraged to propose strategies for collecting further data on exploitive child labor and children's participation in schooling in the early stages of the project's baseline data collection.

When developing their proposed strategy and writing the application, applicants must consult and make reference to relevant literature and documents relating to child labor and the education of target children in Mozambique. Furthermore, the application must demonstrate familiarity with existing child labor, education and social welfare policies, plans and projects in Mozambique, which the applicant is using to inform project design for target children.

Applicants will also be evaluated on their knowledge of other donors' programs as they pertain to the education of target children in Mozambique. In identifying unmet needs, gaps and opportunities not being addressed by existing programs and current efforts, and in proposing their own strategy, applicants must show how their knowledge of the school calendar and the requirements of basic, non-formal, and vocational education systems will be used to develop an approach that successfully enrolls children in educational programs as quickly as possible and without missing an academic year or program cycle. The applicant must identify the direct cost per child of maintaining the child in the educational program, and of withdrawing the child from exploitive/ hazardous or worst forms of child labor. These costs must be realistic, and based on existing costs of similar programs. Applicants must design and implement a project monitoring system that allows for the tracking of direct beneficiaries' work and school status. In addition, as child labor projects tend to be implemented in resource-poor environments where government education and labor inspection systems may be limited, applicants are encouraged to work with local stakeholders to develop sustainable child labor and education monitoring systems, including community-based systems, that can complement government efforts to monitor children's working and educational status beyond the life of the project and enforce the country's child labor and education laws. The applicant must also identify

organizations in Mozambique, including type of local organizations (*e.g,* rural, indigenous), which could potentially implement or contribute to a future project. Applicants are encouraged to develop approaches that support youth participation within efforts to eliminate the worst forms of child labor.

The application must also take into account cross-cutting themes that could affect project results in Mozambique, and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce threats to successful implementation. In Mozambique, these include: (1) The impact that HIV/AIDS is having in terms of increasing children's vulnerability to exploitive labor and decreasing their access to quality educational opportunities; (2) barriers to children's access to schooling, including matriculation fees and other related schooling costs, and deficiencies in the country's educational infrastructure; (3) non-education system barriers that could prevent the withdrawal of children from work and their participation in education programs, such as family income, cultural attitudes; (4) factors affecting the quality and relevance of education available to children, such as high student to teacher ratios, the loss of teachers to HIV/AIDS, and curriculum that does not meet the needs of students; (5) government efforts to implement a plan of action to prevent child labor and provide education for all; (6) the role of teachers, parents, and community organizations; (7) the level of awareness on the worst forms of child labor and the importance of education, especially for girls, by key stakeholders; and (8) strengths and weaknesses in the capacity of and coordination between local organizations.

In the course of implementation, each project must promote the goals of USDOL's Child Labor Education Initiative listed above in Section I(1)(A). In addition, each project funded under this solicitation must provide educational and training opportunities to children as a means to remove and/or prevent them from engaging in exploitive work. Because of the limited resources available under this award, applicants are expected to implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve a greater number of children and communities. However, applicants must not duplicate the activities of existing efforts and/or projects and are expected to work within host government child labor and education frameworks. To avoid duplication, enhance collaboration, expand impact, and develop synergies, the cooperative agreement awardee (hereafter referred to as ''Grantee'') must work cooperatively with national stakeholders in developing project interventions. Applicants are expected to consider the economic and social contexts of the Mozambique when formulating project strategies and to recognize that approaches applicable in one country may not be relevant to others.

USDOL will notify host government ministry officials of the proposed project. During the preparation of an application for this cooperative agreement solicitation, applicants may discuss proposed interventions, strategies, and activities with host government officials and civil society organizations.

Partnerships between more than one organization are also eligible for award and are encouraged, in particular with qualified, target country based organizations in order to build local capacity; in such a case, however, a lead organization must be identified, and relationships with partner organizations receiving funds must be codified in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be submitted as an attachment to the application, and will not count toward the page limit.

Applicants are strongly encouraged to enroll at least one-quarter of the children targeted by the proposed program in educational activities during the first year of project implementation. Under this cooperative agreement solicitation, vocational training for adolescents and income generating alternatives for parents are allowable activities. **Please note:** USDOL reserves the right to approve or disapprove alternative income-generating activities after award of the cooperative agreement. Permissible costs related to alternative income-generating activities for target families may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies. However, as stated in Section IV(5)(B)(i), Grantees and sub-contractors may not provide direct cash transfers to communities, parents, or children.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education for the children targeted, the applicant must, at a minimum, follow the outline of a preliminary project design document presented in Appendix A, and, within that format, address all criteria, factors, and required descriptions identified in Sections IV(2), V(1)(A), VI(3)(A) and VI(3)(D). This response will be the foundation for the final project document that must be approved within six months after award of the cooperative agreement.

If the application does not propose interventions aimed toward the target group or geographical area as identified, then the application will be considered unresponsive and will be rejected.

Note to All Applicants: Grantees are expected to consult with and work cooperatively with stakeholders in the country, including the Ministries of Education, Labor, and other relevant ministries, non-governmental organizations (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 country's 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 the International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC).

As discussed in Section V(1)(D), up to five (5) extra points will be given to applications that include committed non-Federal resources that significantly expand the project's scope. However, applicants are instructed that the project budget submitted with the application must include all necessary and sufficient funds, without reliance on other contracts, grants, or awards, to implement the applicant's proposed project activities and to achieve proposed project goals and objectives under this solicitation. If anticipated funding from another contract, grant, or award fails to materialize, USDOL will not provide additional funding to cover these costs.

II. Award Information

Type of assistance instrument: cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI(2). The duration of the project(s) funded by this solicitation is four (4) years. The start date of program activities will be negotiated upon awarding of the cooperative agreement, but will be no later than September 30, 2005.

Up to U.S. $3 million will be awarded under this solicitation. USDOL may award one or more cooperative agreements to one, several, or a partnership of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any

sub-contractor proposed in the application before award of the cooperative agreement. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. See Section VI(2)(B) for further information on sub-contracts.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based, community-based, or public international organization capable of successfully developing and implementing education programs for working children or children at risk of entering exploitive work in the country 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 country of interest, particularly local NGOs, including faith-based and community-based organizations. In the case of partnership applications, a lead organization must be identified, and the relationship with any partner organizations receiving funds must be set forth in an appropriate joint venture, partnership, or other contractual agreement. 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. See Section V(1)(B)(ii). **Please Note:** Applications from foreign government and quasi-government agencies 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/bkgrd.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(1)).

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 directed toward the U.S. Government will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, or loan.

2. Cost Sharing or Matching Funds

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 and is a rating factor worth up to five (5) additional points.

3. Other Eligibility Criteria

In accordance with 29 CFR Part 98, entities that are debarred or suspended from receiving federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation. In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from USDOL, other Federal agencies, and other organizations regarding past performance of organizations that have implemented or are implementing Child Labor Education Initiative projects, or other projects or activities for USDOL and other Federal agencies (see Section V(1)(B)). Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, USDOL will consider the performance of the organization's key personnel on existing projects with USDOL or other entities, the frequency of the organization's replacement of key personnel, and the quality and timeliness of such key personnel replacements. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

Faith-based organizations may apply for Federal funds under this solicitation. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of cooperative agreement recipients. Similarly, neutral, non-religious criteria that neither favor nor disfavor religion must be employed by Grantees in the selection of project beneficiaries and sub-contractors.

In addition, per the provisions outlined in Section 2 of Executive Order 13279 and 29 CFR 2.33(b), the U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. Funds awarded under this solicitation may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities.

IV. Application and Submission Information

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. Additional copies of the **Federal Register** 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

Applicants must submit one (1) blue ink-signed original, complete application in English, plus two (2) copies of the application.

The application must consist of two (2) separate parts, as well as a table of contents and an abstract summarizing the application in not more than two (2) pages. The table of contents and the abstract are not included in the 45-page limit for Part II. Applicants should number all pages of the application.

Part I of the application, the cost proposal, must contain the Standard Form (SF) 424, Application for Federal Assistance and Sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm.* Copies of these forms are also available online from the General Services Administration 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 and any other accompanying charts or graphs must be written in 10–12 pitch font size.

Part II, the technical proposal, 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 the applicant will carry out the Statement of Work (Section I(2) of this solicitation) and address each of the Application Evaluation 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, and must include responses to the application evaluation criteria outlined in Section V(1) of this solicitation. Part II must include a preliminary project design document submitted in the format shown in Appendix A and discussed further in Section VI(3)(A). The application must include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

Applications will only be accepted in English. To be considered responsive to this solicitation, the application must consist of the above-mentioned separate parts. Any Applications that do not conform to these standards may be deemed unresponsive to this solicitation and may be rejected. Standard forms and attachments are not included in the 45-page limit for Part II. However, any additional information not required under this solicitation will not be considered.

3. Submission Dates, Times, and Address

Applications must be delivered (by hand or mail) by 4:45 p.m., Eastern Time, July 11, 2005 to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, Attention: Lisa Harvey, Reference: Solicitation 05–04. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by non-Postal Service delivery services, such as Federal Express or UPS, will be accepted; however, the applicant bears the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will be considered unresponsive and will be rejected. Any application received at the Procurement Services Center after the deadline 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 the Government after receipt at USDOL at the address indicated; and/or

B. It was sent by registered or certified mail not later than the fifth calendar day before the deadline; or

C. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to the deadline.

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.

Confirmation of receipt can be obtained from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington DC area can be slow and erratic due to concerns involving contamination. All applicants must take this into consideration when preparing to meet the application deadline.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 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 is subject to USDOL approval and ordinarily should not exceed 10 percent of the project budget's direct costs and is expected to be 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 these cooperative agreements, vocational training for adolescents and income-generating alternatives for parents are allowable activities. However, Federal funds under these cooperative agreements cannot be used to provide micro-credits, revolving funds, or loan guarantees. **Please note:** USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities after award of the cooperative agreement. Permissible costs relating to alternative income-generating activities may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies.

iii. Awards will not allow reimbursement of pre-award costs.

B. The following activities are also unallowable under this solicitation:

i. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. In addition, Grantees may not provide direct cash transfers to communities, parents, or children. The funding for this program does not include authority for sub-grants and, as a matter of policy, USDOL does not allow for direct cash transfers to target beneficiaries. USDOL, however, would support the purchase of incidental items in the nature of ''participant support costs'' under OMB Circular A–122, Attachment B, No. 34, which are necessary to ensure that target children have access to schooling. These participant support costs may include such items as uniforms and school supplies, and the provision of tuition and transportation costs in the form of vouchers to the provider of services. If an applicant proposes the provision of participant support costs, the applicant must specify: (1) Why these activities and interventions are necessary, and how they will contribute to the overall project goals; and (2) how the disbursement of funds will be administered in order to maximize efficiency and minimize the risk of misuse. The applicant must also address how participant support costs being funded by the project will be made

sustainable once the project is completed.

If proposed participant support costs are approved by USDOL, these items must be purchased or paid for directly by the Grantee or its sub-contractor(s), as opposed to handing cash directly to children or other individuals.

ii. Under these cooperative agreements, awareness raising and advocacy activities cannot include fund-raising or lobbying of the U.S. Federal, State or Local Governments (see OMB Circular A–122).

iii. In accordance with OMB Circular A–122, funds awarded under this cooperative agreement may be used to cover the costs of meetings and conferences, as long as the primary purpose of such an event is the dissemination of technical information. These costs include meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conference.

iv. USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host-country government efforts or resources intended for child labor or education programs. Thus, Grantees may not provide any of the funds awarded under this cooperative agreement to foreign government entities, ministries, officials, or political parties. However, sub-contracts with foreign government agencies may be awarded to provide direct services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the country is able to provide these services. The Grantee must receive prior USDOL approval before sub-contracting the provision of direct services to foreign government agencies.

v. Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Grantee to ensure compliance with these Executive Orders and laws. This provision must be included in all sub-contracts issued under the cooperative agreement.

vi. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their sub-contractors, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their sub-contractors, that receive U.S. Government funds to fight trafficking in persons cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. It is the responsibility of the Grantee to ensure its sub-contractors meet these criteria. (The U.S. Government is currently developing language to specifically address Public International Organizations' implementation of the above anti-prostitution prohibition. If a project under this solicitation is awarded to such an organization, appropriate substitute language for the above prohibition will be included in the project's cooperative agreement.)

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov*. For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm*.

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 leveraged resources as described below in Section V(1)(D). Applicants are requested to prepare their technical proposal (45 page maximum) organized in accordance with Appendix A, and address all 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 design document described in Section VI(3)(A), and outlined in Appendix A. The applicant's proposal must describe in detail the proposed approach to comply with each requirement. Applicants will be rated based on their understanding of the child labor and education context in the host country, as well as on the clarity and quality of information provided in the project design document.

This component of the application must demonstrate the applicant's thorough knowledge and understanding of the issues, barriers, and challenges involved in providing education to children engaged in or at risk of engaging in exploitive child labor, particularly its worst forms; best-practice solutions to address their needs; and the policy and implementing environment in the selected country. When preparing the technical proposal, the applicant must follow the outline provided in Appendix A, and at minimum include a description of:

i. Children Targeted—The applicant must identify which and how many children are expected to receive direct and indirect services from the project, including the sectors in which they work, geographical location, and other relevant characteristics. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

Children are defined as persons under the age of 18 who have been engaged or at risk of engaging 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 or at risk of engaging in other hazardous and/or exploitive activities. Under this solicitation, at-risk children are defined as siblings of working children, or children living in areas with a high incidence of exploitive child labor.

ii. Needs/Gaps/Barriers—The applicant must describe the specific gaps/educational needs of the children targeted that the project will address.

Note: The number of children targeted by the project must be commensurate with the need in the geographical area or sector where the project will be implemented. In addition, the budget proposed should take into account the type of work in which the target children are currently engaged.

iii. Proposed Strategy—The applicant must discuss the proposed strategy to address gaps/needs/barriers of the children targeted and its rationale. Applicants will be rated based on the quality and pertinence of proposed strategies. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

iv. Sustainability Plan—The applicant must discuss a proposed plan for sustainability of project efforts. To USDOL, sustainability is linked to project impact and the ability of individuals, communities, and a nation

to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including financial commitment and policy change) by project partners to continue the actions generated by the project, including enforcement of existing policies that target child labor and school attendance. Applicants will be rated based on the pertinence and appropriateness of the proposed sustainability plan.

v. 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. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

vi. 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 will be rated based on the clarity and quality of the information provided in the work plan.

Note: Applicants are also encouraged to enroll one-quarter of the targeted children in educational activities during the first year of project implementation.

vii. 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 (enrollment, retention, and completion) and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award. However, Grantees will be responsible for entering information on each project beneficiary into this database system. Further 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 delivery of direct education and training opportunities to working children and those engaged in or at risk of engaging in exploitive work, and the four goals of the Child Labor Education Initiative set out in Section I(1)(A). Because of the potentially significant links between hours worked, working conditions, and school performance, Grantees are encouraged to collect information to track this correlation among project beneficiaries. Applicants proposing innovative methodologies in this area will be rated more highly.

Please note: In addition to reporting on the common indicators, applicants will be expected to track the working status, conditions, and hours of targeted children, including the withdrawal of children from exploitive/hazardous working conditions. Applicants are also expected to explore cost-effective ways of assessing the impact of proposed services/interventions to indirect beneficiaries.

Applicants are expected to budget for costs associated with collecting and reporting on the common indicators (enrollment, retention, and completion), data management, tracking the working status children, and assessing the impact of services/interventions to indirect beneficiaries.

viii. Budget/Cost Effectiveness—The applicant must show how the budget reflects program goals and design in a cost-effective way to reflect budget/performance integration. The budget must be linked to the activities and outputs of the implementation plan listed above. The budget proposed should also take into account the type of work in which the target children are currently engaged.

This section of the application must 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 single audits or attestation engagements (as applicable); midterm and final evaluations; and other related costs. Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities, including costs associated with collecting information for and reporting on the common indicators. In addition, the budget should include a contingency provision, calculated at 5% of the project's total direct costs, for unexpected expenses essential to meeting project goals, such as host country currency devaluations, security costs, etc. USDOL will not provide additional funding to cover unanticipated costs. Grantees must obtain prior approval from USDOL before using contingency funds. If these funds have not been exhausted toward the end of the project period, USDOL and the Grantee will determine whether it is appropriate to reallocate the funds to direct educational or training services or return the funds to USDOL.

Grantees should also budget for a facilitator-led project launch meeting in the target country, which will allow key stakeholders to discuss issues of project design and monitoring.

When developing their applications, applicants are also expected to allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct and/or indirect administrative costs. Higher ratings 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 projected costs should be reported, as they will become part of the cooperative agreement upon award. In their cost proposal (Part I of the application), 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). An example of an Outputs Based Budget has been provided as Annex B.

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 at risk of or engaging in exploitive child labor, preferably in the country of interest.

ii. Country Presence—Given the need to provide children engaged in the worst forms of child labor with immediate assistance in accessing educational and training opportunities, applicants will be evaluated on their ability to start up project activities soon after signing a cooperative agreement. Having country presence, or partnering with in-country organizations, presents the best chance of expediting the delivery of services to children engaged or at risk of engaging in the worst forms of child labor. In their application, applicants must address country presence; outreach to government and non-governmental organizations, including local and community-based organizations; and the ability of the organization to start up project activities in a timely fashion. Applicants may submit supporting documentation with their application demonstrating country presence and/or outreach to host government ministries and non-governmental organizations in the country. These attachments will not count toward the page limit.

Within 60 days of award, an applicant, or its partners, must be formally recognized by the host government using the appropriate mechanism, *e.g.*, Memorandum of Understanding or local registration of the organization. An applicant must demonstrate, independently or through a relationship with another organization(s), 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.

iii. Fiscal Oversight—The organization shows evidence of a sound financial system.

If the applicant is a U.S.-based, non-profit organization already subject to the single audit requirements, the applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an applicant is not in compliance with the requirements for completing their single audit, the application will be considered unresponsive and will be rejected.

If the applicant is a for-profit or foreign-based organization, a copy of its most current independent financial audit must accompany the application as an attachment.

Applicants should also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, and sub-contractors that are subject to the Single Audit Act. If the proposed partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment. Applicants may wish to review the audits of prospective organizations before deciding whether they want to partner with or sub-contract to them under an Education Initiative cooperative agreement.

Note to All Applicants: In order to expedite the Procurement screening of applications, and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and sub-contractors. These attachments will not count toward the application page limit.

USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports.

Note to All Applicants: If a copy of the most recent audit report is not submitted as part of the application, the application will be considered unresponsive and will be rejected. In addition, if the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected.

iv. Coordination—If two or more organizations are applying for the award in the form of a partnership or joint venture, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. Although each partner will bear independent legal liability for the entire project, the applicants must identify a lead organization and must submit the joint venture, partnership, or other contractual agreement as an attachment (which will not count toward the page limit). If a partnership between two or more organizations is proposed, applicants are encouraged to outline the deliverables, activities, and corresponding timeline for which each organization will be responsible for completing.

v. Experience—The application must include information on previous and current grants, cooperative agreements, or contracts of the applicant with USDOL and other Federal agencies that are relevant to this solicitation, including:

(a) The organizations for which the work was done;

(b) A contact person in that organization with his/her 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 must be provided in appendices and will not count against the maximum page requirement. USDOL reserves the right to contact the organizations listed and use the information provided in evaluating applications.

Note to All Applicants: In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from the Department and others regarding past performance of organizations already implementing Child Labor Education Initiative projects or activities for USDOL and others. Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, the performance of the organization's key personnel on existing projects with USDOL or other entities, whether the organization has a history of replacing key personnel with similarly qualified staff, and the timeliness of replacing key personnel, will also be taken into consideration when rating past performance. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

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.

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 who are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL.

Note to All Applicants: All key personnel must allocate 100 percent of their time to the project and be present within the target country. Key personnel positions must not be combined. Proposed key personnel candidates must sign letters of agreement to serve on the project, and indicate availability to commence work within 30 days of cooperative agreement award. Applicants must submit these letters as an attachment to the application. (These will not count toward the page limit). If key personnel letters of agreement to serve on the project are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

i. Key personnel—The applicant must identify all key personnel candidates proposed to carry out the requirements of this solicitation. ''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, as detailed in Section VI(2)(C), may not be replaced or have hours reduced without the approval of the Grant Officer. If key personnel candidates are not designated, the application will be considered unresponsive and will be rejected. Note: preference may be given to applicants who propose qualified key personnel who have extensive experience in the host country.

(a) A Project Director who will be responsible for overall project management, supervision, administration, and implementation of the requirements of the cooperative agreement. He/she will establish and maintain systems for project operations; ensure that all cooperative agreement deadlines are met and targets are achieved; maintain working relationships with project stakeholders and partners; and oversee the preparation and submission of progress and financial reports. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as: Education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children; and monitoring and evaluation of basic education projects. Consideration will be given to candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates must also have knowledge of exploitive child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from exploitive child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language of the target country, or at least one of the official languages if there is more than one, 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. A working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target country.

(c) A Monitoring and Evaluation Officer who will 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, database management, and knowledge of the Government Performance and Results Act. Individuals with a demonstrated ability to build capacity of the project team and partners in these domains will be given special consideration.

Information provided on key personnel candidates must include the following:

- The educational background and experience of all key personnel to be assigned to the project.
- The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.
- The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed by the applying organization or is dependent upon planned recruitment or sub-contracting.

ii. Other Professional Personnel—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation. The applicant must also indicate whether the proposed work by other professional personnel will be performed by persons currently employed by the organization or is dependent upon planned recruitment or sub-contracting.

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.

Note: Applicants will be rated based on the clarity and quality of the information provided in the management plan.

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, as well as a description of the roles and responsibilities of all key and professional personnel proposed. Resumes must be submitted as an attachment to the application and will not count toward the page limit. If resumes of key personnel candidates are not submitted as part of the application,

the application will be considered unresponsive and will be rejected.

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. The application must indicate whether the individual is currently employed by the applicant, and (if so) for how long.

D. Leveraging Resources (5 Points)

USDOL will give up to five (5) additional rating points to applications that include committed non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs or activities will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities, such as micro-credit, revolving funds, or loan guarantees, which are not directly allowable under the cooperative agreement. To be eligible for the additional points, the applicant must list the source(s) of resources, the nature, and possible activities anticipated with these resources under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc. Staff time of proposed key personnel may not be submitted as a leveraged resource.

2. Review and Selection Process

The Office of Procurement Services at USDOL will screen all applications to determine whether all required elements, as identified in section IV(2) above, are present and clearly identifiable. If an application does not include all of the required elements, including required attachments, it will be considered unresponsive and will be rejected. Once an application is deemed unresponsive, the Office of Procurement Services will send a letter to the applicant, which will state that the application was incomplete, indicate which document was missing from the application, and explain that the technical review panel will be unable to rate the application.

The following documents must be included in the application package in order for the application to be deemed complete and responsive:

i. A cost proposal.

ii. A technical proposal.

iii. The applicant's most recent audit report.

iv. Resumes of all key personnel candidates.

v. Signed letters of agreement to serve on the project from all key personnel candidates.

Each complete application will be objectively rated by a technical review 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 cost, the availability of funds, and other factors. If USDOL does not receive technically acceptable applications in response to this solicitation, USDOL reserves the right to terminate the competition and not make any award. 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 best and final 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. In addition, USDOL reserves the right to further negotiate program components after award, during the project design document submission and review process. See Section VI(3)(A).

Award of a cooperative agreement under this solicitation may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in the target country.

3. Anticipated Announcement and Award Dates

Designation decisions will be made, where possible, within 45 days after the deadline for submission of proposals. 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 does not waive any cooperative agreement requirements and/or procedures.

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 ICLP'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 regulations, Executive Orders, applicable Office of Management and Budget (OMB) Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of U.S. government laws and 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 must also submit to an annual independent audit. Single audits conducted under the provisions of OMB Circular A–133 are to be submitted by U.S. based non-profit organizations to meet the annual independent audit requirement. For foreign-based and private for-profit Grantees, an attestation engagement, conducted in accordance with U.S. ''Government Auditing Standards,'' that includes an auditor's opinions on (1) compliance with the Department's regulations and the provisions of the cooperative agreement and (2) the reliability of the Grantee's financial and performance reports must

be submitted to meet the annual audit requirement. Costs for these audits or attestation engagements 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 cooperative agreement, if applicable to a particular Grantee:

i. 29 CFR Part 2 Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

ii. 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.

iii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

v. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

vi. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vii. 29 CFR Part 93—New Restrictions on Lobbying.

viii. 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.

ix. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

x. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

xi. 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 single audits or attestation engagements (as applicable); closeout; mid-term and final evaluations; project-related document preparation, including deliverables; 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 all applicable to the implementation of projects awarded under this solicitation.

B. Sub-Contracts

The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. However, sub-contracts may be included as a budget line item.

All relationships between the Grantee and partner organizations receiving funds under this solicitation must be set forth in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be provided to USDOL as an attachment to the application; copies of such agreements will not count toward the page limit.

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. Sub-contracts awarded after the cooperative agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL.

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.

C. Key Personnel

As noted in Section V(1)(C), the applicant must list the individuals who have been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel (Project Director, Education Specialist, and Monitoring and Evaluation Officer) will be available to begin work on the project no later than 30 days after award.

After the cooperative agreement has been awarded and throughout the life of the project, Grantees agree to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for any key personnel to continue work on the project as planned. A Grantee may nominate substitute key personnel and submit the nominations to the GOTR. A Grantee may also propose reducing the hours of key personnel; however, a Grantee must obtain prior approval from the Grant Officer for all such changes to key personnel. If the Grant Officer is unable to approve the key personnel change, he/she reserves the right to terminate the cooperative agreement or disallow costs. **Please note:** As stated in Section V(1)(B)(v), the performance of the organization's key personnel on existing projects with USDOL or other entities, and whether the organization has a history of replacing key personnel with equally qualified staff, will be taken into consideration when rating past performance.

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 may involve only specified commitments for which a need existed during the cooperative agreement period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, unless a longer period of time is granted by USDOL.

All equipment purchased with project funds must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantee is expected to 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 are expected to 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 is expected to monitor the implementation of the program; report to USDOL on a semi-annual basis or more frequently if deemed necessary by USDOL; and undergo evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the cooperative agreement. The project budget must include funds to: plan, implement, monitor, report on, and evaluate programs and activities (including mid-term and final evaluations and annual single audits or attestation engagements, as applicable); 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 or within the project's region (*e.g.* Africa, Asia, Latin America, Middle East and North Africa, and Europe). Applicants based both within and outside the United States should also budget for travel by field staff and other key personnel to Washington, DC at the beginning of the project for a post-award meeting with USDOL. Indicators of project performance must also be proposed by a Grantee and approved by USDOL in the Performance Monitoring Plan, as discussed in Section VI(3)(D) below. Unless otherwise indicated, a Grantee must submit copies of all required reports to USDOL by the specified due dates. Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs.

Specific deliverables are the following:

A. Project Design Document

As stated in Sections I(2) and IV(2), applications must include a preliminary project design document in the format described in Appendix A, with design elements linked to a logical framework matrix. (**Note:** The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical Child Labor Education Initiative project is available at *http://www.dol.gov/ilab/grants/bkgrd.htm.).* The preliminary project document must include all sections identified in Appendix A, including a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable, and project budget. The narrative must address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section (Section V(1)(A) above).

Within six months after the time of the award, the Grantee must deliver the final project design document, based on the application written in response to this solicitation, including the results of additional consultation with stakeholders, partners, and USDOL. The final project design document must 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 (SF 269) to USDOL on a semi-annual basis by 31 March and 30 September of each year during the cooperative agreement period. However, USDOL reserves the right to require up to four reports a year, as necessary. Also, a copy of the Federal Cash Transactions Report (PSC 272) must be submitted to USDOL upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

C. Annual Work Plan

Grantees must develop an annual work plan within six months of project award for approval by USDOL so as to ensure coordination with other relevant social actors throughout the country. Subsequent annual work plans must be delivered no later than one year after the previous one.

D. Performance Monitoring and Evaluation Plan

Grantees must develop a performance monitoring and evaluation plan in collaboration with USDOL, 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 must be developed in conjunction with the logical framework project design and common indicators for reporting selected by USDOL. The plan must include a limited number of key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection is expected to be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan must be submitted to USDOL 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 must be external and independent in nature. A Grantee must respond in writing to any comments and recommendations provided in the mid-term evaluation report. The budget must include the projected cost of mid-term and final evaluations.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

VIII. Other Information

1. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL, for approval, all media-related, awareness-raising, and educational materials developed by the Grantee or its sub-contractors before they are reproduced, published, or used. USDOL considers such materials to include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. USDOL will review materials for technical accuracy and other issues.

In addition, USDOL reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes, and authorize others to do so, all materials that are developed or for which ownership is purchased by the Grantee under an award.

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 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 the MPG. In consultation with USDOL, 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 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 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.''

3. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 23rd day of May, 2005.

Lisa Harvey,

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 in Annex A)
   - 3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework matrix in Annex A)
   - 3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration in Annex B)
4. Project Monitoring and Evaluation
   - 4.1 Indicators and Means of Verification
   - 4.2 Baseline Data Collection Plan
5. Institutional and Management Framework
   - 5.1 Institutional Arrangements for Implementation
   - 5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities
   - 5.3 Other Donor or International Organization Activity and Coordination
   - 5.4 Project Management Organizational Chart
6. Inputs
   - 6.1 Inputs provided by USDOL
   - 6.2 Inputs provided by the Grantee
   - 6.3 National and/or Other Contributions
7. Sustainability

Annex A: Full presentation of the Logical Framework matrix

Annex B: Outputs Based Budget example

(A worked example of a Logical Framework matrix, an Outputs Based Budget, and other background documentation for this solicitation are available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*.)

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BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Angola

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 05–05.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

Key Dates: Deadline for Submission of Application is July 11, 2005.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $2 million through one or more cooperative agreements to an organization or organizations to improve access to and quality of education programs as a means to combat exploitive child labor in Angola. Projects funded under this solicitation will provide educational and training opportunities to children as a means of removing and/or preventing them from engaging in exploitive work or the worst forms of child labor. The activities funded will complement and expand upon existing projects and programs to improve basic education in the country. Applications must respond to the entire Statement of Work outlined in this solicitation. In Angola, activities under these cooperative agreements will provide the direct delivery of quality basic education to working children and those at risk of entering work, and will result in their enrollment, persistence, and completion of an education or training program.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded 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 in work in Angola. The overall purpose of USDOL's Child Labor Education Initiative, as consistently enunciated in USDOL appropriations FY 2000 through FY 2005, is to work toward the elimination of the worst forms of child labor through the provision of basic education. Accordingly, entities applying under this solicitation must develop and implement strategies for the prevention and withdrawal of children from the worst forms of child labor, consistent with this purpose. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809 (2004). The cooperative agreement or cooperative agreements awarded under this initiative will be managed by ILAB's International Child Labor Program (ICLP) 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 and completion in the geographical areas where children are engaged in or are most at risk of working in the worst forms of child labor.

1. Background and Program Scope

A. 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 close to U.S. $400 million in technical assistance funding to combat exploitive child labor in approximately 70 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. Convention 182 lists four categories of the worst forms of child labor, and calls for their immediate elimination:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including force or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which, by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, ILO Recommendation 190 considers the following: Work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; and work for long hours or night work where the child is unreasonably confined to the premises.

From FY 2001 to FY 2005, the U.S. Congress has appropriated over U.S. $180 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 and quality of basic education for working children and those at risk of entering work. The elimination of exploitive child labor depends, to a large extent, on improving access to, quality of, and relevance of education.

In addition to providing direct education and training opportunities to working children and those at risk of engaging in exploitive work, the Child Labor Education Initiative has four goals:

i. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

ii. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

iii. Strengthen national institutions and policies on education and child labor; and

iv. Ensure the long-term sustainability of these efforts.

B. 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 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 and enforcement.

Although these elements and characteristics tend to exist throughout the world in areas with a high incidence of exploitive child labor, they manifest themselves in specific ways in the country of interest in this solicitation. Therefore, specific, targeted interventions are required in the country. In Angola, this project must provide or facilitate the delivery of educational services to at risk or working children, support the collection of data on this target population, and build the capacity of national institutions to address child labor and education issues. For this project, applicants must 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 of school and joining the labor force, and/or children still working in a particular sector) and how direct education service delivery, capacity building and policy change can be used to address particular barriers and needs. Brief background information on education and exploitive child labor in the country of interest is provided below.

For additional information on exploitive child labor in Angola, applicants are strongly encouraged to refer to The Department of Labor's 2004 Findings on the Worst Forms of Child Labor available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2004/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 Angola

UNICEF estimated that 29.9 percent of children ages 5 to 14 years in Angola were working in 2001. It is believed that the majority of working children live in rural areas, particularly areas in which many of Angola's approximately 4 million refugees, displaced persons and demobilized soldiers have resettled following the end of the country's 30-year civil war in 2002. In Angola's urban areas, many working children live on the streets. Some of these children were displaced or separated from their families during the civil war and have yet to be reunited with their families and communities. Many more come from families living in extreme poverty on the outskirts of major cities and other areas of the country that have been slow to recover from the war. These children, particularly girls, are at high risk of trafficking, commercial sexual exploitation, involvement in pornography, forced labor, sexual slavery, and other forms of exploitation. Angola is considered to be a country of origin for trafficked children. Children have been trafficked internally to various parts of the country as well as to Namibia and South Africa for the purposes of sexual exploitation, commercial labor, and to work under exploitive conditions as domestic workers. In addition, the incidence of HIV/AIDS in Angola is reported to have grown since the end of the war. Young people are considered to be particularly at risk of infection and the effects of the disease on caregivers have left many children vulnerable to exploitive child labor.

Although there are no recent reports indicating the involvement of underage children in armed forces, during the war it is estimated as many as 14,000 children under the age of 15 served in the conflict. Tens of thousands of girls were estimated to have been abducted

by fighting forces during the war to serve as ''wives'' to soldiers and to assist with other duties. In May 2002, the government adopted a ''Post-war Child Protection Strategy.'' Under this strategy, former child soldiers and war affected children received a ''child rights package,'' including birth registration, civil identification documents, family tracing and reintegration services, education and skills training, and psychosocial support. This ongoing reintegration program, focusing on family reunification efforts, identified 11,076 separated children and reunited 3,670 with their families as of March 2004. Demobilization and reintegration programs in Angola generally provided little, if any, assistance to the women and girls abducted by fighting forces and tended to give less comprehensive resettlement packages to soldiers under 18 years, many of whom performed the same duties as adult soldiers. Despite assistance efforts, former child soldiers and war-affected children have been found to be especially vulnerable to the worst forms of child labor.

In Angola in 1999–2000, the gross primary enrollment rate was approximately 74 percent and the net primary enrollment rate was approximately 30 percent. In provinces hardest hit by the war, gross enrollment rates averaged less than 40 percent. In 2002, 26 percent of children who were enrolled in primary school reached grade 4. Rates of enrollment, retention, and completion in Angola tend to be lower among girls.

Several recent programs are expected to improve education in Angola. In 2004, the Government of Angola concluded its national child registration campaign, which has documented 3.8 million children under the age of 18 years since August 2002. UNICEF and the Government of Angola expanded their existing Back-to-School campaign by recruiting and training 29,000 new primary school teachers for the 2004 school year. As a result, student enrollment has increased by nearly 1 million, primarily in grades 1 through 4. The program is developing into an Education for All Program. In April 2004, the Ministry of Education held public consultations on the proposed National Plan of Action for Education for All.

Many areas of rapid resettlement, areas hardest hit by the war, and remote rural areas, however, continue to lack basic social services, including education. This absence of services has led to an increased migration to municipal and provincial capitals, where basic services and schools are already operating beyond capacity. Although primary school construction has received significant support from donors, many of these newly constructed schools lack qualified teachers, curricula, staff, and much needed resources and support. Viable non-formal education, accelerated education, vocational training, and other alternative educational opportunities are also scarce, and lack qualified teachers, staff, resources and support.

Years of conflict have left many students, including former child soldiers, severely traumatized and some physically disabled. Abuse experienced by many abducted and war-affected girls has left them especially vulnerable, and some with young children requiring care during school hours. During the conflict, many students missed years of schooling, resulting in classrooms populated by many overage students. For these young people, the services that are available to them are often inadequate to meet their special needs. Appropriate educational, vocational and social services for youth between the ages of 12 and 18 are considered to be particularly critical due to the potentially volatile nature of this age group.

Some teacher training and community programs have included special training for adults working with former child soldiers, war-affected children, and children engaged in or at risk of engaging in the worst forms of child labor. Some social protection and educational programs, curricula, policies, and resources have also been revised and made more suitable for this population. However, there continues to be a need for more relevant and adequate teaching techniques; resources, curricula, and teaching tools; formal, vocational, and alternative educational programs; life skills training; social services; community support; educational and social polices and programs; and opportunities for young people to develop into productive and responsible citizens.

Note to Applicants: All applicants must have country presence, or partner with an established and eligible organization within the target country.

2. Statement of Work

Taking into account the challenges of educating working children in Angola, the applicant must implement creative and innovative approaches to promote policies and services that will enhance the provision of educational opportunities for children involved in or at risk of entering exploitive child labor. Projects funded under this cooperative agreement solicitation must focus on direct education service(s) delivery to targeted children, including The provision of educational services that address the specific gaps/challenges that working or at-risk children from attending or staying in school.

USDOL defines educational services and/or training opportunities as follows: (1) Non-formal or basic literacy education, as demonstrated by enrollment in educational classes provided by the program. These classes may include transitional, leveling, or literacy classes so that a child may either be mainstreamed into formal school and/or can participate in vocational training activities; (2) Vocational, pre-vocational, or skills training, as demonstrated by enrollment in training courses in order to develop a particular skill (*e.g.*, mechanics, sewing); (3) Mainstreaming/ Transitioning into the formal education system, non-formal education, vocational, pre-vocational, or skills training after having received assistance from the project to enable them to enroll in such programs. The assistance provided by the project could include one or more of the following services: The provision of school meals, uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled in an education program; and (4) Formal school enrollment, by directly supporting a child's enrollment, retention, and completion in the formal school system. Similar to the assistance provided under mainstreaming, assistance provided by the project could include one or more of the following services: The provision of uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled and maintained in the formal school system.

Activities such as awareness raising and social mobilization campaigns, psychosocial services for children, improvements in curriculum, teacher training or improvements to school infrastructure are important for improving access to and quality of basic education. While grantees are encouraged to address the needs of working children in a comprehensive manner, these activities will not be considered as direct services for individual children. Rather, direct services are those that meet the basic needs of individual children that are direct beneficiaries of the project.

Through improved policies and direct education service delivery, as

applicable, the expected outcomes/results of the project are to: (1) Reduce the number of children engaged in or at risk of entering exploitive child labor, (2) increase educational opportunities and access (enrollment) for children who are at risk of engaging in, engaging in, and/or removed from exploitive child labor, particularly its worst forms; (3) encourage retention in and completion of educational programs; and (4) expand the successful transition of children from non-formal education programs into formal schools or vocational programs.

The applicant must identify a target number of urban and/or rural children engaged in or at risk of engaging in exploitive and/or worst forms of child labor in Angola, who would be the direct beneficiaries of a Child Labor Education Initiative project, and the geographic areas of greatest need. Direct beneficiaries are children who are withdrawn or prevented from entering exploitive child labor, particularly its worst forms, by USDOL-funded projects. Children withdrawn from exploitive work are those children who were found working and no longer work as a result of a project intervention. This category also includes those children who were engaged in exploitive work and as a result of a project's intervention now work shorter hours under safer conditions. Children prevented from entering work are those children who are either siblings of (ex) working children or those children who are considered to be at high risk of engaging in exploitive work. In order to be considered withdrawn or prevented, the child must benefit from educational or training opportunities. This is measured by enrollment into school or training programs. The project's strategy must be to remove these children from, child labor and to provide them with educational and other services to prevent them from engaging in or prevent them form entering exploitive and/or worst forms of child labor in the future.

In preparing the application, in order to identify gaps, unmet needs, and opportunities that could be addressed through a USDOL Child Labor Education Initiative project, applicants must conduct a needs assessment to make a preliminary identification of the current working and educational status of the children who the applicant proposes as beneficiaries. It is expected that the information gathered during this assessment will be refined after award. The assessment, with data sources, must include information on the incidence and nature of exploitive child labor, particularly the worst forms, among target children, hours of work, age and sex distribution of the proposed beneficiaries, educational performance relative to other children, if available, and any research or other data that might indicate correlations between educational performance and hours of work. Applicants are also encouraged to propose strategies for collecting further data on exploitive child labor and children's participation in schooling in the early stages of the project's baseline data collection.

When developing their proposed strategy and writing the application, applicants must consult and make reference to relevant literature and documents relating to child labor and the education of target children in Angola. Furthermore, the application must demonstrate familiarity with existing child labor, education and social welfare policies, plans and projects in Angola, which the applicant is using to inform project design for target children.

Applicants will also be evaluated on their knowledge of other donors' programs as they pertain to the education of target children in Angola. In identifying unmet needs, gaps and opportunities not being addressed by existing programs and current efforts, and in proposing their own strategy, applicants must show how their knowledge of the school calendar and the requirements of basic, non-formal, and vocational education systems will be used to develop an approach that successfully enrolls children in educational programs as quickly as possible and without missing an academic year or program cycle. The applicant must identify the direct cost per child of maintaining the child in the educational program, and of withdrawing the child from exploitive/hazardous or worst forms of child labor. These costs must be realistic, and based on existing costs of similar programs. Applicants must design and implement a project monitoring system that allows for the tracking of direct beneficiaries' work and school status. In addition, as child labor projects tend to be implemented in resource-poor environments where government education and labor inspection systems may be limited, applicants are encouraged to work with local stakeholders to develop sustainable child labor and education monitoring systems, including community-based systems, that can complement government efforts to monitor children's working and educational status beyond the life of the project and enforce the country's child labor and education laws. The applicant must also identify organizations in Angola, including types of local organizations (*e.g.*, rural, indigenous), which could potentially implement or contribute to a future project. Applicants are encouraged to develop approaches that support youth participation within efforts to eliminate the worst forms of child labor.

The application must also take into account cross-cutting themes that could affect project results in Angola, and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce threats to successful implementation. In Angola these include: (1) The enduring impact of the civil war in terms of increasing children's vulnerability to exploitive labor and decreasing their access to quality educational opportunities; (2) The impact of HIV/AIDS in terms of increasing children's vulnerability to exploitive labor and decreasing their access to quality educational opportunities; (3) The incidence and nature of child trafficking for exploitive labor internally and internationally, geographical areas from which children are trafficked and areas receiving trafficked children, as well as factors contributing to the supply of and demand for trafficked children; (4) Barriers that could prevent the withdrawal of children from exploitive work and prevent their participation in education programs; (5) Factors affecting the quality and relevance of education available to children; and (6) The level of awareness of worst forms of child labor and the importance of education, especially for girls, among key stakeholders. The application should consider existing efforts to combat exploitive child labor and promote education for children being undertaken by government, international organizations, and civil society, including community-based and youth led efforts, and gaps in services that these efforts may not have addressed.

In the course of implementation, each project must promote the goals of USDOL's Child Labor Education Initiative listed above in Section I(1)(A). In addition, each project funded under this solicitation must provide educational and training opportunities to children as a means to remove and/or prevent them from engaging in exploitive work. Because of the limited resources available under this award, applicants are expected to implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve a greater number of children and communities. However, applicants must not duplicate the activities of existing

efforts and/or projects and are expected to work within host government child labor and education frameworks. To avoid duplication, enhance collaboration, expand impact, and develop synergies, the cooperative agreement awardee (hereafter referred to as ''Grantee'') must work cooperatively with national stakeholders in developing project interventions. Applicants are expected to consider the economic and social contexts of the country when formulating project strategies and to recognize that approaches applicable in one country may not be relevant to others.

USDOL will notify host government ministry officials of the proposed project. During the preparation of an application for this cooperative agreement solicitation, applicants may discuss proposed interventions, strategies, and activities with host government officials and civil society organizations.

Partnerships between more than one organization are also eligible for award and are encouraged, in particular with qualified, target country-based organizations in order to build local capacity; in such a case, however, a lead organization must be identified, and relationships with partner organizations receiving funds must be codified in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be submitted as an attachment to the application, and will not count toward the page limit.

Applicants are strongly encouraged to enroll at least one-quarter of the children targeted by the proposed program in educational activities during the first year of project implementation. Under this cooperative agreement solicitation, vocational training for adolescents and income generating alternatives for parents are allowable activities. **Please note:** USDOL reserves the right to approve or disapprove alternative income-generating activities after award of the cooperative agreement. Permissible costs relating to alternative income-generating activities for target families may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies. However, as stated in Section IV(5)(B)(i), Grantees and sub-contractors may not provide direct cash transfers to communities, parents, or children.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education for the children targeted, the applicant must, at a minimum, follow the outline of a preliminary project design document presented in Appendix A, and, within that format, address all criteria, factors, and required descriptions identified in Sections IV(2), V(1)(A), VI(3)(A) and VI(3)(D). This response will be the foundation for the final project document that must be approved within six months after award of the cooperative agreement.

If the application does not propose interventions aimed toward the target group or geographical area as identified, then the application will be considered unresponsive and will be rejected.

Note to All Applicants: Grantees are expected to consult with and work cooperatively with stakeholders in the country, including the Ministries of Education, Labor, and other relevant ministries, non-governmental organizations (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 consistent with the country's 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 the International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC).

As discussed in Section V(1)(D), up to five (5) extra points will be given to applications that include committed non-Federal resources that significantly expand the project's scope. However, applicants are instructed that the project budget submitted with the application must include all necessary and sufficient funds, without reliance on other contracts, grants, or awards, to implement the applicant's proposed project activities and to achieve proposed project goals and objectives under this solicitation. If anticipated funding from another contract, grant, or award fails to materialize, USDOL will not provide additional funding to cover these costs.

II. Award Information

Type of assistance instrument: cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI(2). The duration of the project(s) funded by this solicitation is four (4) years. The start date of program activities will be negotiated upon awarding of the cooperative agreement, but will be no later than September 30, 2005.

Up to U.S. $2 million will be awarded under this solicitation. USDOL may award one or more cooperative agreements to one, several, or a partnership of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any sub-contractor proposed in the application before award of the cooperative agreement. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. See Section VI(2)(B) for further information on sub-contracts.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based, community-based, or public international organization capable of successfully developing and implementing education programs for working children or children at risk of entering exploitive work in the country 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 country of interest, particularly local NGOs, including faith-based and community-based organizations. In the case of partnership applications, a lead organization must be identified, and the relationship with any partner organizations receiving funds must be set forth in an appropriate joint venture, partnership, or other contractual agreement. 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. See Section V(1)(B)(ii). **Please Note:** Applications from foreign government and quasi-government agencies 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/bkgrd.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(1)).

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 directed toward the U.S. Government will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, or loan.

2. Cost Sharing or Matching Funds

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 and is a rating factor worth up to five (5) additional points.

3. Other Eligibility Criteria

In accordance with 29 CFR Part 98, entities that are debarred or suspended from receiving federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation. In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from USDOL, other Federal agencies, and other organizations regarding past performance of organizations that have implemented or are implementing Child Labor Education Initiative projects, or other projects or activities for USDOL and other Federal agencies (see Section V(1)(B)). Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, USDOL will consider the performance of the organization's key personnel on existing projects with USDOL or other entities, the frequency of the organization's replacement of key personnel, and the quality and timeliness of such key personnel replacements. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

Faith-based organizations may apply for Federal funds under this solicitation. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of cooperative agreement recipients. Similarly, neutral, non-religious criteria that neither favor nor disfavor religion must be employed by Grantees in the selection of project beneficiaries and sub-contractors.

In addition, per the provisions outlined in Section 2 of Executive Order 13279 and 29 CFR 2.33(b), the U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. Funds awarded under this solicitation may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities.

IV. Application and Submission Information

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. Additional copies of the **Federal Register** 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

Applicants must submit one (1) blue ink-signed original, complete application in English, plus two (2) copies of the application. The application must consist of two (2) separate parts, as well as a table of contents and an abstract summarizing the application in not more than two (2) pages. The table of contents and the abstract are not included in the 45-page limit for Part II. Applicants should number all pages of the application.

Part I of the application, the cost proposal, must contain the Standard Form (SF) 424, Application for Federal Assistance and Sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*. Copies of these forms are also available online from the General Services Administration 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 and any other accompanying charts or graphs must be written in 10–12 pitch font size.

Part II, the technical proposal, 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 the applicant will carry out the Statement of Work (Section I(2) of this solicitation) and address each of the Application Evaluation 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, and must include responses to the application evaluation criteria outlined in Section V(1) of this solicitation. Part II must include a preliminary project design document submitted in the format shown in Appendix A and discussed further in Section VI(3)(A). The application must include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

Applications will only be accepted in English. To be considered responsive to this solicitation, the application must consist of the above-mentioned separate parts. *Any applications that do not conform to these standards may be deemed unresponsive to this solicitation and will be rejected.* Standard forms and attachments are *not* included in the 45-page limit for Part II. However, any additional information not required under this solicitation will not be considered.

3. Submission Dates, Times, and Address

Applications must be delivered (by hand or mail) by 4:45 p.m., Eastern Time, July 11, 2005, to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, Attention: Lisa Harvey, Reference: Solicitation 05–05. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by non-Postal Service delivery services, such as Federal Express or UPS, will be accepted; however, the applicant bears the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will be considered unresponsive and will be rejected. Any application received at the Procurement Services Center after the deadline 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 the Government after receipt at USDOL at the address indicated; and/or

B. It was sent by registered or certified mail not later than the fifth calendar day before the deadline; or

C. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to the deadline.

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.

Confirmation of receipt can be obtained from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*. All applicants are advised that U.S. mail delivery in the Washington DC area can be slow and erratic due to concerns involving contamination. All applicants must take this into consideration when preparing to meet the application deadline.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 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 is subject to USDOL approval and ordinarily should not exceed 10 percent of the project budget's direct costs and is expected to be 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 these cooperative agreements, vocational training for adolescents and income-generating alternatives for parents are allowable activities. However, Federal funds under these cooperative agreements cannot be used to provide micro-credits, revolving funds, or loan guarantees. Please note: USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities after award of the cooperative agreement. Alternative income-generating activities may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies.

iii. Awards will not allow reimbursement of pre-award costs.

B. The following activities are also unallowable under this solicitation:

i. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. In addition, Grantees may not provide direct cash transfers to communities, parents, or children. The funding for this program does not include authority for sub-grants and, as a matter of policy, USDOL does not allow for direct cash transfers to target beneficiaries. USDOL, however, would support the purchase of incidental items in the nature of ''participant support costs'' under OMB Circular A–122, Attachment B, No. 34, which are necessary to ensure that target children have access to schooling. These participant support costs may include such items as uniforms and school supplies, and the provision of tuition and transportation costs in the form of vouchers to the provider of services. If an applicant proposes the provision of participant support costs, the applicant must specify: (1) Why these activities and interventions are necessary, and how they will contribute to the overall project goals; and (2) how the disbursement of funds will be administered in order to maximize efficiency and minimize the risk of misuse. The applicant must also address how participant support costs being funded by the project will be made sustainable once the project is completed.

If proposed participant support costs are approved by USDOL, these items must be purchased or paid for directly by the Grantee or its sub-contractor(s), as opposed to handing cash directly to children or other individuals.

ii. Under these cooperative agreements, awareness raising and advocacy activities cannot include fund-raising or lobbying of the U. S. Federal, State or Local Governments (see OMB Circular A–122).

iii. In accordance with OMB Circular A–122, funds awarded under this cooperative agreement may be used to cover the costs of meetings and conferences, as long as the primary purpose of such an event is the dissemination of technical information. These costs include meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conference.

iv. USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host-country government efforts or resources intended for child labor or education programs. Thus, Grantees may not provide any of the funds awarded under this cooperative agreement to foreign government entities, ministries, officials, or political parties. However, sub-contracts with foreign government agencies may be awarded to provide direct services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the country is able to provide these services. The Grantee must receive prior USDOL approval before sub-contracting the provision of direct services to foreign government agencies.

v. Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Grantee to ensure compliance with these Executive Orders and laws. This provision must be included in all sub-contracts issued under the cooperative agreement.

vi. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

U.S. non-governmental organizations, and their sub-contractors, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their sub-contractors, that receive U.S. Government funds to fight trafficking in persons cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. It is the responsibility of the Grantee to ensure its sub-contractors meet these criteria. (The U.S. Government is currently developing language to specifically address Public International Organizations' implementation of the above anti-prostitution prohibition. If a project under this solicitation is awarded to such an organization, appropriate substitute language for the above prohibition will be included in the project's cooperative agreement.)

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov*. For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

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 leveraged resources as described below in Section V(1)(D). Applicants are requested to prepare their technical proposal (45 page maximum) organized in accordance with Appendix A, and address all 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 design document described in Section VI(3)(A), and outlined in Appendix A. The applicant's proposal must describe in detail the proposed approach to comply with each requirement. Applicants will be rated based on their understanding of the child labor and education context in the host country, as well as on the clarity and quality of information provided in the project design document.

This component of the application must demonstrate the applicant's thorough knowledge and understanding of the issues, barriers, and challenges involved in providing education to children engaged in or at risk of engaging in exploitive child labor, particularly its worst forms; best-practice solutions to address their needs; and the policy and implementing environment in the selected country. When preparing the technical proposal, the applicant must follow the outline provided in Appendix A, and at minimum include a description of:

i. *Children Targeted*—The applicant must identify which and how many children are expected to receive direct and indirect services from the project, including the sectors in which they work, geographical location, and other relevant characteristics. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation. Children are defined as persons under the age of 18 who have been engaged or at risk of engaging 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 or at risk of engaging in other hazardous and/or exploitive activities. Under this solicitation, at-risk children are defined as siblings of working children, or children living in areas with a high incidence of exploitive child labor.

ii. *Needs/Gaps/Barriers*—The applicant must describe the specific gaps/educational needs of the children targeted that the project will address.

Note: The number of children targeted by the project must be commensurate with the need in the geographical area or sector where the project will be implemented. In addition, the budget proposed should take into account the type of work in which the target children are currently engaged.

iii. *Proposed Strategy*—The applicant must discuss the proposed strategy to address gaps/needs/barriers of the children targeted and its rationale. Applicants will be rated based on the quality and pertinence of proposed strategies. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

iv. *Sustainability Plan*—The applicant must discuss a proposed plan for sustainability of project efforts. To USDOL, sustainability is linked to project impact and the ability of individuals, communities, and a nation to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including financial commitment and policy change) by project partners to continue the actions generated by the project, including enforcement of existing policies that target child labor and school attendance. Applicants will be rated based on the pertinence and appropriateness of the proposed sustainability plan.

v. *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. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

vi. *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 will be rated based on the clarity and quality of the information provided in the work plan.

Note: Applicants are also encouraged to enroll one-quarter of the targeted children in educational activities during the first year of project implementation.

vii. *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 (enrollment, retention, and completion) and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award. Grantees will

be responsible for entering information on each project beneficiary into this database system. Further 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 delivery of direct education and training opportunities to working children and those at risk of engaging in exploitive work, and the four goals of the Child Labor Education Initiative set out in Section I(1)(A). Because of the potentially significant links between hours worked, working conditions, and school performance, Grantees are encouraged to collect information to track this correlation among project beneficiaries. Applicants proposing innovative methodologies in this area will be rated more highly.

Please note: In addition to reporting on the common indicators, applicants will be expected to track the working status, conditions, and hours of targeted children, including the withdrawal of children from exploitive/hazardous working conditions. Applicants are also expected to explore cost-effective ways of assessing the impact of proposed services/interventions to indirect beneficiaries.

Applicants are expected to budget for costs associated with collecting and reporting on the common indicators (enrollment, retention, and completion), data management, tracking the working status children, and assessing the impact of services/interventions to indirect beneficiaries.

viii. *Budget/Cost Effectiveness*—The applicant must show how the budget reflects program goals and design in a cost-effective way to reflect budget/performance integration. The budget must be linked to the activities and outputs of the implementation plan listed above. The budget proposed should also take into account the type of work in which the target children are currently engaged.

This section of the application must 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 single audits or attestation engagements (as applicable); midterm and final evaluations; and other related costs. Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities, including costs associated with collecting information for and reporting on the common indicators. In addition, the budget should include a contingency provision, calculated at 5% of the project's total direct costs, for unexpected expenses essential to meeting project goals, such as host country currency devaluations, security costs, etc. USDOL will not provide additional funding to cover unanticipated costs. Grantees must obtain prior approval from USDOL before using contingency funds. If these funds have not been exhausted toward the end of the project period, USDOL and the Grantee will determine whether it is appropriate to reallocate the funds to direct educational or training services or return the funds to USDOL.

Grantees should also budget for a facilitator-led project launch meeting in the target country, which will allow key stakeholders to discuss issues of project design and monitoring.

When developing their applications, applicants are also expected to allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct and/or indirect administrative costs. Higher ratings 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 projected costs should be reported, as they will become part of the cooperative agreement upon award. In their cost proposal (Part I of the application), 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). An example of an Outputs Based Budget has been provided as Annex B.

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 engaging in or at risk of engaging in exploitive child labor, preferably in the country of interest.

ii. *Country Presence*—Given the need to provide children engaged in the worst forms of child labor with immediate assistance in accessing educational and training opportunities, applicants will be evaluated on their ability to start up project activities soon after signing a cooperative agreement. Having country presence, or partnering with in-country organizations, presents the best chance of expediting the delivery of services to children engaged or at risk of engaging in the worst forms of child labor. In their application, applicants must address country presence; outreach to government and non-governmental organizations, including local and community-based organizations; and the ability of the organization to start up project activities in a timely fashion. Applicants may submit supporting documentation with their application demonstrating country presence and/or outreach to host government ministries and non-governmental organizations in the country. These attachments will not count toward the page limit.

Within 60 days of award, an applicant, or its partners, must be formally recognized by the host government using the appropriate mechanism, e.g., Memorandum of Understanding or local registration of the organization. An applicant must demonstrate, independently or through a relationship with another organization(s), 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.

iii. *Fiscal Oversight*—The organization shows evidence of a sound financial system. If the applicant is a U.S.-based, non-profit organization already subject to the single audit requirements, the applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an applicant is not in compliance with

the requirements for completing their single audit, the application will be considered unresponsive and will be rejected.

If the applicant is a for-profit or foreign-based organization, a copy of its most current independent financial audit must accompany the application as an attachment.

Applicants should also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, and sub-contractors that are subject to the Single Audit Act. If the proposed partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment. Applicants may wish to review the audits of prospective organizations before deciding whether they want to partner with or sub-contract to them under an Education Initiative cooperative agreement.

Note to All Applicants: In order to expedite the screening of applications, and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and sub-contractors. These attachments will not count toward the application page limit.

USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports.

Note to All Applicants: If a copy of the most recent audit report is not submitted as part of the application, the application will be considered unresponsive and will be rejected. In addition, if the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected.

iv. *Coordination*—If two or more organizations are applying for the award in the form of a partnership or joint venture, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. Although each partner will bear independent legal liability for the entire project, the applicants must identify a lead organization and must submit the joint venture, partnership, or other contractual agreement as an attachment (which will not count toward the page limit). If a partnership between two or more organizations is proposed, applicants are encouraged to outline the deliverables, activities, and corresponding timeline for which each organization will be responsible for completing.

v. *Experience*—The application must include information on previous and current grants, cooperative agreements, or contracts of the applicant with USDOL and other Federal agencies that are relevant to this solicitation, including:

(a) The organizations for which the work was done;

(b) A contact person in that organization with his/her 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 must be provided in appendices and will not count against the maximum page requirement. USDOL reserves the right to contact the organizations listed and use the information provided in evaluating applications.

Note to All Applicants: In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from the Department and others regarding past performance of organizations already implementing Child Labor Education Initiative projects or activities for USDOL and others. Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, the performance of the organization's key personnel on existing projects with USDOL or other entities, whether the organization has a history of replacing key personnel with similarly qualified staff, and the timeliness of replacing key personnel, will also be taken into consideration when rating past performance. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

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.

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 who are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL.

Note to All Applicants: All key personnel must allocate 100 percent of their time to the project and be present within the target country. Key personnel positions must not be combined. Proposed key personnel candidates must sign letters of agreement to serve on the project, and indicate availability to commence work within 30 days of cooperative agreement award. Applicants must submit these letters as an attachment to the application. (These will not count toward the page limit). If key personnel letters of agreement to serve on the project are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

i. *Key personnel*—The applicant must identify all key personnel candidates proposed to carry out the requirements of this solicitation. ''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, as detailed in Section VI(2)(C), may not be replaced or have hours reduced without the approval of the Grant Officer. If key personnel candidates are not designated, the application will be considered unresponsive and will be rejected. Note: preference may be given to applicants who propose qualified key personnel who have extensive experience in the host country.

(a) A *Project Director* who will be responsible for overall project management, supervision, administration, and implementation of the requirements of the cooperative agreement. He/she will establish and maintain systems for project operations; ensure that all cooperative agreement deadlines are met and targets are achieved; maintain working relationships with project stakeholders and partners; and oversee the

preparation and submission of progress and financial reports. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as: Education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children; and monitoring and evaluation of basic education projects. Consideration will be given to candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates must also have knowledge of exploitive child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from exploitive child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language of the target country, or at least one of the official languages if there is more than one, 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. A working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target country.

(c) A *Monitoring and Evaluation Officer* who will 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, database management, and knowledge of the Government Performance and Results Act. Individuals with a demonstrated ability to build capacity of the project team and partners in these domains will be given special consideration.

Information provided on key personnel candidates must include the following:

- The educational background and experience of all key personnel to be assigned to the project.
- The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.
- The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed by the applying organization or is dependent upon planned recruitment or sub-contracting.

ii. *Other Professional Personnel*—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation. The applicant must also indicate whether the proposed work by other professional personnel will be performed by persons currently employed by the organization or is dependent upon planned recruitment or sub-contracting.

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.

Note: Applicants will be rated based on the clarity and quality of the information provided in the management plan.

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, as well as a description of the roles and responsibilities of all key and professional personnel proposed. Resumes must be submitted as an attachment to the application and will not count toward the page limit. If resumes of key personnel candidates are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

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. The application must indicate whether the individual is currently employed by the applicant, and (if so) for how long.

D. Leveraging Resources (5 Points)

USDOL will give up to five (5) additional rating points to applications that include committed non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs or activities will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities, such as micro-credit, revolving funds, or loan guarantees, which are not directly allowable under the cooperative agreement. To be eligible for the additional points, the applicant must list the source(s) of resources, the nature, and possible activities anticipated with these resources under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc. Staff time of proposed key personnel may not be submitted as a leveraged resource.

2. Review and Selection Process

The Office of Procurement Services at USDOL will screen all applications to determine whether all required elements, as identified in section IV(2) above, are present and clearly identifiable. If an application does not include all of the required elements, including required attachments, it will be considered unresponsive and will be rejected. Once an application is deemed unresponsive, the Office of Procurement Services will send a letter to the applicant, which will state that the application was incomplete, indicate which document was missing from the application, and explain that the technical review panel will be unable to rate the application.

The following documents must be included in the application package in order for the application to be deemed complete and responsive:

i. A cost proposal.

ii. A technical proposal.

iii. The applicant's most recent audit report.

iv. Resumes of all key personnel candidates.

v. Signed letters of agreement to serve on the project from all key personnel candidates.

Each complete application will be objectively rated by a technical review 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 cost, the availability of funds, and other factors. If USDOL does not receive technically acceptable applications in response to this solicitation, USDOL reserves the right to terminate the competition and not make any award. 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 best and final 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. In addition, USDOL reserves the right to further negotiate program components after award, during the project design document submission and review process. See Section VI(3)(A).

Award of a cooperative agreement under this solicitation may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in the target country.

3. Anticipated Announcement and Award Dates

Designation decisions will be made, where possible, within 45 days after the deadline for submission of proposals. 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 does not waive any cooperative agreement requirements and/or procedures.

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 ICLP'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 regulations, Executive Orders, applicable Office of Management and Budget (OMB) Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of U.S. government laws and 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 must also submit to an annual independent audit. Single audits conducted under the provisions of OMB Circular A–133 are to be submitted by U.S. based non-profit organizations to meet the annual independent audit requirement. For foreign-based and private for-profit Grantees, an attestation engagement, conducted in accordance with U.S. ''Government Auditing Standards,'' that includes an auditor's opinions on (1) compliance with the Department's regulations and the provisions of the cooperative agreement and (2) the reliability of the Grantee's financial and performance reports must be submitted to meet the annual audit requirement. Costs for these audits or attestation engagements 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 cooperative agreement, if applicable to a particular Grantee:

i. 29 CFR Part 2 Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

ii. 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.

iii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

v. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

vi. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vii. 29 CFR Part 93—New Restrictions on Lobbying.

viii. 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.

ix. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

x. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

xi. 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 single audits or attestation engagements (as applicable); closeout; mid-term and final evaluations; project-related document preparation, including deliverables; 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 all applicable to the implementation of projects awarded under this solicitation.

B. Sub-Contracts

The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. However, sub-contracts may be included as a budget line item.

All relationships between the Grantee and partner organizations receiving funds under this solicitation must be set forth in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be provided to USDOL as an attachment to the application; copies of such agreements will not count toward the page limit.

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. Sub-contracts awarded after the cooperative agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL.

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.

C. Key Personnel

As noted in Section V(1)(C), the applicant must list the individuals who have been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel (Project Director, Education Specialist, and Monitoring and Evaluation Officer) will be available to begin work on the project no later than 30 days after award.

After the cooperative agreement has been awarded and throughout the life of the project, Grantees agree to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for any key personnel to continue work on the project as planned. A Grantee may nominate substitute key personnel and submit the nominations to the GOTR. A Grantee may also propose reducing the hours of key personnel; however, a Grantee must obtain prior approval from the Grant Officer for all such changes to key personnel. If the Grant Officer is unable to approve the key personnel change, he/she reserves the right to terminate the cooperative agreement or disallow costs. **Please note:** As stated in Section V(1)(B)(v), the performance of the organization's key personnel on existing projects with USDOL or other entities, and whether the organization has a history of replacing key personnel with equally qualified staff, will be taken into consideration when rating past performance.

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 may involve only specified commitments for which a need existed during the cooperative agreement period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, unless a longer period of time is granted by USDOL.

All equipment purchased with project funds must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantee are expected to 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 are expected to 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 is expected to monitor the implementation of the program; report to USDOL on a semi-annual basis or more frequently if deemed necessary by USDOL; and undergo evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the cooperative agreement. The project budget must include funds to: Plan, implement, monitor, report on, and evaluate programs and activities (including mid-term and final evaluations and annual single audits or attestation engagements, as applicable); 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 or within the project's region (e.g., Africa, Asia, Latin America, Middle East and North Africa, and Europe). Applicants based both within and outside the United States should also budget for travel by field staff and other key personnel to Washington, DC at the beginning of the project for a post-award meeting with USDOL. Indicators of project performance must also be proposed by a Grantee and approved by USDOL in the Performance Monitoring Plan, as discussed in Section VI(3)(D) below. Unless otherwise indicated, a Grantee must submit copies of all required reports to USDOL by the specified due dates. Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs.

Specific deliverables are the following:

A. Project Design Document

As stated in Sections I(2) and IV(2), applications must include a preliminary project design document in the format described in Appendix A, with design elements linked to a logical framework matrix. (**Note:** The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To

guide applicants, a sample logical framework matrix for a hypothetical Child Labor Education Initiative project is available at *http://www.dol.gov/ilab/grants/bkgrd.htm*). The preliminary project document must include all sections identified in Appendix A, including a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable, and project budget. The narrative must address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section (Section V(1)(A) above).

Within six months after the time of the award, the Grantee must deliver the final project design document, based on the application written in response to this solicitation, including the results of additional consultation with stakeholders, partners, and USDOL. The final project design document must 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 (SF 269) to USDOL on a semi-annual basis by 31 March and 30 September of each year during the cooperative agreement period. However, USDOL reserves the right to require up to four reports a year, as necessary. Also, a copy of the Federal Cash Transactions Report (PSC 272) must be submitted to USDOL upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

C. Annual Work Plan

Grantees must develop an annual work plan within six months of project award for approval by USDOL so as to ensure coordination with other relevant social actors throughout the country. Subsequent annual work plans must be delivered no later than one year after the previous one.

D. Performance Monitoring and Evaluation Plan

Grantees must develop a performance monitoring and evaluation plan in collaboration with USDOL, 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 must be developed in conjunction with the logical framework project design and common indicators for reporting selected by USDOL. The plan must include a limited number of key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection is expected to be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan must be submitted to USDOL 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 must be external and independent in nature. A Grantee must respond in writing to any comments and recommendations provided in the mid-term evaluation report. The budget must include the projected cost of mid-term and final evaluations.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

VIII. Other Information

1. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL, for approval, all media-related, awareness-raising, and educational materials developed by the Grantee or its sub-contractors before they are reproduced, published, or used. USDOL considers such materials to include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. USDOL will review materials for technical accuracy and other issues.

In addition, USDOL reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes, and authorize others to do so, all materials that are developed or for which ownership is purchased by the Grantee under an award.

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 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 the MPG. In consultation with USDOL, 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 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 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.''

3. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 23rd day of May, 2005.

Lisa Harvey,

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 in Annex A)
3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework matrix in Annex A)
3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration in Annex B)
4. Project Monitoring and Evaluation
4.1 Indicators and Means of Verification
4.2 Baseline Data Collection Plan
5. Institutional and Management Framework
5.1 Institutional Arrangements for Implementation
5.2 Responsibilities
5.3 Other Donor or International Organization Activity and Coordination
5.4 Project Management Organizational Chart
6. Inputs
6.1 Inputs provided by USDOL
6.2 Inputs provided by the Grantee 6.3 National and/or Other Contributions
7. Sustainability
Annex A: Full presentation of the Logical Framework matrix
Annex B: Outputs Based Budget example

(A worked example of a Logical Framework matrix, an Outputs Based Budget, and other background documentation for this solicitation are available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*)

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DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Sierra Leone and Liberia

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 05–03.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

Key Dates: Deadline for Submission of Application is July 11, 2005.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $5 million through one or more cooperative agreements to an organization or organizations to improve access to and quality of education programs as a means to combat exploitive child labor in Sierra Leone and Liberia. Projects funded under this solicitation will provide educational and training opportunities to children as a means of removing and/or preventing them from engaging in exploitive work or the worst forms of child labor. The activities funded will complement and expand upon existing projects and programs to improve basic education in the countries. Applications must respond to the entire Statement of Work outlined in this solicitation. In Sierra Leone and Liberia, activities under these cooperative agreements will provide the direct delivery of quality basic education to working children and those at risk of entering work, and will result in their enrollment, persistence, and completion of an education or training program.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded 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 in work in Sierra Leone and Liberia. The overall purpose of USDOL's Child Labor Education Initiative, as consistently enunciated in USDOL appropriations FY 2000 through FY 2005, is to work toward the elimination of the worst forms of child labor through the provision of basic education. Accordingly, entities applying under this solicitation must develop and implement strategies for the prevention and withdrawal of children from the worst forms of child labor, consistent with this purpose. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809 (2004). The cooperative agreement or cooperative agreements awarded under this initiative will be managed by ILAB's International Child Labor Program (ICLP) 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 and completion in the geographical areas where children are engaged in or are most at risk of working in the worst forms of child labor.

1. Background and Program Scope

A. 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 close to U.S. $400 million in technical assistance funding to combat exploitive child labor in approximately 70 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. Convention 182 lists four categories of the worst forms of child labor, and calls for their immediate elimination:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including force or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs, as defined in the relevant international treaties;
- Work which, by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, ILO Recommendation 190 considers the following: work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; and work for long hours or night work where the child is unreasonably confined to the premises.

From FY 2001 to FY 2005, the U.S. Congress has appropriated over U.S. $180 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 and quality of basic education for working children and those at risk of entering work. The elimination of exploitive child labor depends, to a large extent, on improving access to, quality of, and relevance of education.

In addition to providing direct education and training opportunities to working children and those at risk of engaging in exploitive work, the Child Labor Education Initiative has four goals:

i. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

ii. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

iii. Strengthen national institutions and policies on education and child labor; and

iv. Ensure the long-term sustainability of these efforts.

B. Barriers to Education for Working Children, Country Backgrounds, and Focus of Solicitation

Throughout the world, there are complex causes of exploitive child labor as well as barriers to education for children engaged in or at risk of entering exploitive child labor. These include: Poverty; education system barriers; infrastructure barriers; legal and policy barriers; resource gaps; institutional barriers; informational gaps; demographic characteristics of children and/or families; cultural and traditional practices; and weak labor markets and enforcement.

Although these elements and characteristics tend to exist throughout the world in areas with a high incidence of exploitive child labor, they manifest themselves in specific ways in the countries of interest in this solicitation. Therefore, specific, targeted interventions are required in the countries. In Sierra Leone and Liberia this project must provide or facilitate the delivery of educational services to at risk or working children, support the collection of data on this target population, and build the capacity of national institutions to address child labor and education issues. For this project, applicants must 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 of school and joining the labor force, and/or children still working in a particular sector) and how direct education service delivery, capacity building and policy change can be used to address particular barriers and needs. Brief background information on education and exploitive child labor in the countries of interest is provided below.

For additional information on exploitive child labor in Sierra Leone and Liberia, applicants are strongly encouraged to refer to *The Department of Labor's 2004 Findings on the Worst Forms of Child Labor* available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2004/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 Sierra Leone and Liberia

In 2000, UNICEF estimated that 71.6 percent of children aged 5 to 14 years in Sierra Leone were working. Estimates are unavailable for Liberia. Reports indicate that, in both countries, a majority of working children are unpaid. Many work in family businesses and on family subsistence farms. Children also work for low wages as domestic workers. Street children in Monrovia, Freetown and other major cities number in the thousands. Many of these children are contracted by adults to steal, beg and work as street vendors. Children have also been reported to work in alluvial diamond fields in both countries, some under forced labor conditions.

Trafficking in persons is a problem, particularly in Sierra Leone. Although reports of trafficking in persons in Sierra Leone have declined with the demobilization of child soldiers following the end of the civil conflict, children continue to be trafficked to countries in West Africa, including Liberia, for labor and commercial sexual exploitation, as well as to Lebanon, Europe, and North America. From Liberia, children are trafficked to Sierra Leone and Cote d'Ivoire, some for purposes of commercial sexual exploitation. Internally, within both Liberia and Sierra Leone, children are trafficked from rural to urban areas and to diamond mining areas for purposes of sexual exploitation and forced labor. In Sierra Leone, the government has made efforts to address this problem through the creation of a multi-sectoral Trafficking in Persons Action Committee and has held anti-trafficking training for police officers. Child prostitution is an increasing problem in both countries. In addition, experts expect the incidence of HIV/AIDS in Sierra Leone and Liberia will grow as these countries emerge from the isolation of war. Young people are considered to be particularly at risk of infection and the effects of the disease on caregivers are expected to leave many children vulnerable to child labor.

Throughout the past decade, child soldiers were common among government armed forces and rebels groups in Sierra Leone and Liberia. As of 2004, there were no indications of children serving in government forces in either country. Former rebel combatants in Liberia, however, continue to forcibly recruit children in Liberia and Sierra Leone to serve as porters, laborers, and sex slaves. Former child soldiers and war-affected children have been found to be especially vulnerable to the worst forms of child labor. There are indications that many former child soldiers in Sierra Leone and Liberia have been re-recruited by fighting forces in Cote d'Ivoire.

The Government of Sierra Leone established a National Commission for War-Affected Children to provide support to demobilized child soldiers and children who are separated from their parents. Official demobilization and reintegration programs for former fighters in Sierra Leone, including nearly 7,000 former child soldiers, ended around the beginning of 2004. These programs offered little assistance to the thousands of abducted women, girls, and the children born to them during their service to fighting forces in Sierra Leone. Several international organizations implemented programs to assist these girls during the later stages of demobilization.

Sierra Leone's National Youth Policy, approved in 2003, is also intended to target assistance to groups whose needs may have been neglected, such as young girls. Child Welfare Committees were trained to provide support to girls and to child diamond miners, but funding for these efforts has been limited. The Government of Liberia recently established a National Commission on Child Labor intended to support efforts to eliminate the worst forms of child labor within the country, particularly among children made vulnerable by war. However, the Commission has had difficulty operationalizing their charter and objectives.

Reports indicate that approximately 21,000 child soldiers still require demobilization in Liberia, including an

unknown number of abducted girls. Despite a peace agreement in Liberia in August 2003, demobilization and reintegration programs have been slow to start. The programs are expected to provide former child soldiers with access to healthcare, skills training, family tracing and reunification, and to increase awareness and improve the capacity of non-governmental organizations (NGOs) and agencies to address the immediate and longer-term needs of former child soldiers. Provisions for girls and women were also included.

Statistics on education in Sierra Leone and Liberia are minimal. In both countries, nearly half of primary school age children are not enrolled in school. Persistence rates are also low with approximately one-third of students in Liberia reaching grade five. Rates of enrollment, retention, and completion tend to be lower among girls and among children in areas of rapid resettlement, camps for Internally Displaced Persons and refugees, remote rural areas, and areas hardest hit by the war.

Several recent programs are expected to improve education in Sierra Leone and Liberia. The Government of Sierra Leone has created a National Education Action Plan that emphasizes improving the quality and relevance of education, expanding access to primary education, especially for girls and the rural poor, and enhancing the planning and management capacity of the Ministry of Education, Science and Technology. In both Sierra Leone and Liberia, UNICEF has launched projects to renovate schools, distribute teaching materials and equipment, retrain teachers, and promote girls' education.

Many areas of rapid resettlement, areas hardest hit by the war, and remote rural areas continue, however, to lack basic social services, including education. This absence of services has led to an increased migration to municipal and provincial capitals, where basic services and schools are already operating beyond capacity. Although primary school construction has received significant support from donors, many of these newly constructed schools lack qualified teachers, curricula, staff, and much needed resources and support. Viable non-formal education, accelerated education, vocational training, and other alternative educational opportunities are also scarce, and lack qualified staff, resources and support.

Years of conflict have left many students, including former child soldiers, severely traumatized and some physically disabled. Abuse experienced by many abducted and war-affected girls has left them especially vulnerable, and some with young children requiring care during school hours. During the conflict, many students missed years of schooling, resulting in classrooms populated by many overage students. For these young people, the services that are available to them are often inadequate to meet their special needs. Appropriate educational, vocational and social services for youth between the ages of 12 and 18 are considered to be particularly critical due to the potentially volatile nature of this age group.

Some teacher training and community programs have included special training for adults working with former child soldiers, war-affected children, and children engaged in or at risk of engaging in the worst forms of child labor. Some social protection and educational programs, curricula, policies, and resources have also been revised and made more suitable for this population. However, there continues to be a need for more relevant and adequate teaching techniques; resources and teaching tools; formal, vocational and alternative educational programs; life skills training; social services; community support; polices and programs; and opportunities for young people to develop into productive and responsible citizens.

Note to Applicants: All applicants must have country presence, or partner with an established and eligible organization within the target countries.

2. Statement of Work

Taking into account the challenges of educating working children in Sierra Leone and Liberia, the applicant must implement creative and innovative approaches to promote policies and services that will enhance the provision of educational opportunities for children involved in or at risk of entering exploitive child labor. Projects funded under this cooperative agreement solicitation must focus on direct education service(s) delivery to targeted children, including the provision of educational services that address the specific gaps/challenges that working or at-risk children from attending or staying in school.

USDOL defines educational services and/or training opportunities as follows: (1) Non-formal or basic literacy education, as demonstrated by enrollment in educational classes provided by the program. These classes may include transitional, leveling, or literacy classes so that a child may either be mainstreamed into formal school and/or can participate in vocational training activities; (2) Vocational, pre-vocational, or skills training, as demonstrated by enrollment in training courses in order to develop a particular skill (*e.g.*, mechanics, sewing); (3) Mainstreaming/Transitioning into the formal education system, non-formal education, vocational, pre-vocational, or skills training after having received assistance from the project to enable them to enroll in such programs. The assistance provided by the project could include one or more of the following services: the provision of school meals, uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled in an education program; and (4) Formal school enrollment, by directly supporting a child's enrollment, retention, and completion in the formal school system. Similar to the assistance provided under mainstreaming, assistance provided by the project could include one or more of the following services: the provision of uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled and maintained in the formal school system.

Activities such as awareness raising and social mobilization campaigns, psychosocial services for children, improvements in curriculum, teacher training or improvements to school infrastructure are important for improving access to and quality of basic education. While grantees are encouraged to address the needs of working children in a comprehensive manner, these activities will not be considered as direct services for individual children. Rather, direct services are those that meet the basic needs of individual children that are direct beneficiaries of the project.

Through improved policies and direct education service delivery, as applicable, the expected outcomes/results of the project are to: (1) Reduce the number of children engaged in or at risk of entering exploitive child labor, (2) increase educational opportunities and access (enrollment) for children who are at risk of, engaging in, and/or removed from exploitive child labor, particularly its worst forms; (3) encourage retention in and completion of educational programs; and (4) expand the successful transition of children from non-formal education programs into formal schools or vocational programs.

The applicant must identify a target number of urban and/or rural children engaged in or at risk of engaging in exploitive and/or worst forms of child

labor in Sierra Leone and Liberia, who would be the direct beneficiaries of a Child Labor Education Initiative project, and the geographic areas of greatest need. Direct beneficiaries are children who are withdrawn or prevented from entering exploitive child labor, particularly its worst forms, by USDOL-funded projects. Children withdrawn from exploitive work are those children who were found working and no longer work as a result of a project intervention. This category also includes those children who were engaged in exploitive work and as a result of a project's intervention now work shorter hours under safer conditions. Children prevented from entering work are those children who are either siblings of (ex) working children or those children who are considered to be at high risk of engaging in exploitive work. In order to be considered withdrawn or prevented, the child must benefit from educational or training opportunities. This is measured by enrollment into school or training programs. The project's strategy must be to remove these children from, or to prevent them from entering, child labor and to provide them with educational and other services to prevent them from engaging in such exploitive and/or worst forms of child labor in the future.

In preparing the application, in order to identify gaps, unmet needs, and opportunities that could be addressed through a USDOL Child Labor Education Initiative project, applicants must conduct a needs assessment to make a preliminary identification of the current working and educational status of the children who the applicant proposes as beneficiaries. It is expected that the information gathered during this assessment will be refined after award. The assessment, with data sources, must include information on the incidence and nature of exploitive child labor, particularly the worst forms, among target children, hours of work, age and sex distribution of the proposed beneficiaries, educational performance relative to other children, if available, and any research or other data that might indicate correlations between educational performance and hours of work. Applicants are also encouraged to propose strategies for collecting further data on exploitive child labor and children's participation in schooling in the early stages of the project's baseline data collection.

When developing their proposed strategy and writing the application, applicants must consult and make reference to relevant literature and documents relating to child labor and the education of target children in Sierra Leone and Liberia. Furthermore, the application must demonstrate familiarity with existing child labor, education and social welfare policies, plans and projects in Sierra Leone and Liberia, which the applicant is using to inform project design for target children.

Applicants will also be evaluated on their knowledge of other donors' programs as they pertain to the education of target children in Sierra Leone and Liberia. In identifying unmet needs, gaps and opportunities not being addressed by existing programs and current efforts, and in proposing their own strategy, applicants must show how their knowledge of the school calendar and the requirements of basic, non-formal, and vocational education systems will be used to develop an approach that successfully enrolls children in educational programs as quickly as possible without missing an academic year or program cycle. The applicant must identify the direct cost per child of maintaining the child in the educational program, and of withdrawing the child from exploitive/hazardous or worst forms of child labor. These costs must be realistic, and based on existing costs of similar programs. Applicants must design and implement a project monitoring system that allows for the tracking of direct beneficiaries' work and school status. In addition, as child labor projects tend to be implemented in resource-poor environments where government education and labor inspection systems may be limited, applicants are encouraged to work with local stakeholders to develop sustainable child labor and education monitoring systems, including community-based systems, that can complement government efforts to monitor children's working and educational status beyond the life of the project and enforce each country's child labor and education laws. The applicant must also identify organizations in Sierra Leone and Liberia, including types of local organizations (*e.g.*, rural, indigenous), which could potentially implement or contribute to a future project. Applicants are encouraged to develop approaches that support youth participation within efforts to eliminate the worst forms of child labor.

Due to similarities in the nature of child labor and the challenges faced by the current education systems in Sierra Leone and Liberia, as well as cross-border issues such as trafficking and refugee migration between the two countries, applicants must submit one application that proposes strategies that seek to prevent or eliminate exploitive child labor through the promotion of education alternatives for children in both countries. Strategies should include approaches that are country specific, as well as regional, that address child labor and education issues in both countries. The application must also take into account cross-cutting themes that could affect project results, and meaningfully incorporate them into the proposed strategy, either to increase opportunities for, or reduce threats to, successful implementation. In Sierra Leone and Liberia these include: (1) The enduring impact of the civil war in terms of increasing children's vulnerability to exploitive labor and decreasing their access to quality educational opportunities; (2) The impact of HIV/AIDS in terms of increasing children's vulnerability to exploitive labor and decreasing their access to quality educational opportunities; (3) The incidence and nature of child trafficking for exploitive labor internally within Sierra Leone and Liberia and internationally, geographical areas from which children are trafficked and areas receiving trafficked children, as well as factors contributing to the supply of and demand for trafficked children; (4) Barriers that could prevent the withdrawal of children from exploitive work and prevent their participation in education programs; (5) Factors affecting the quality and relevance of education available to children; (6) The level of awareness of worst forms of child labor and the importance of education, especially for girls, among key stakeholders; and (7) Cross-border issues that might impact child labor trends in Sierra Leona and Liberia, and opportunities for cooperation and collaboration among efforts to reduce the worst forms of child labor in Sierra Leone and Liberia. The application should consider existing efforts to combat exploitive child labor and promote education for children being undertaken by government, international organizations, and civil society, including community-based and youth-led efforts, and gaps in services that these efforts may not have addressed.

In the course of implementation, each project must promote the goals of USDOL's Child Labor Education Initiative listed above in Section I(1)(A). In addition, each project funded under this solicitation must provide educational and training opportunities to children as a means to remove them from and/or prevent them from engaging in exploitive work. Because of the limited resources available under this award, applicants are expected to

implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve a greater number of children and communities. However, applicants must not duplicate the activities of existing efforts and/or projects and are expected to work within host government child labor and education frameworks. To avoid duplication, enhance collaboration, expand impact, and develop synergies, the cooperative agreement awardee (hereafter referred to as ''Grantee'') must work cooperatively with national stakeholders in developing project interventions. Applicants are expected to consider the economic and social contexts of the countries when formulating project strategies and to recognize that approaches applicable in one country may not be relevant to others.

USDOL will notify host government ministry officials of the proposed project. During the preparation of an application for this cooperative agreement solicitation, applicants may discuss proposed interventions, strategies, and activities with host government officials and civil society organizations.

Partnerships between more than one organization are also eligible for award and are encouraged, in particular with qualified, target country-based organizations in order to build local capacity; in such a case, however, a lead organization must be identified, and relationships with partner organizations receiving funds must be codified in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be submitted as an attachment to the application, and will not count toward the page limit.

Applicants are strongly encouraged to enroll at least one-quarter of the children targeted by the proposed program in educational activities during the first year of project implementation. Under this cooperative agreement solicitation, vocational training for adolescents and income generating alternatives for parents are allowable activities. **Please note:** USDOL reserves the right to approve or disapprove alternative income-generating activities after award of the cooperative agreement. Permissible costs relating to alternative income-generating activities for target families may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies. However, as stated in Section IV(5)(B)(i), Grantees and sub-contractors may not provide direct cash transfers to communities, parents, or children.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education for the children targeted, the applicant must, at a minimum, follow the outline of a preliminary project design document presented in Appendix A, and, within that format, address all criteria, factors, and required descriptions identified in Sections IV(2), V(1)(A), VI(3)(A) and VI(3)(D). This response will be the foundation for the final project document that must be approved within six months after award of the cooperative agreement.

If the application does not propose interventions aimed toward the target group or geographical area as identified, then the application will be considered unresponsive and will be rejected.

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 consistent with 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 the International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC).

As discussed in Section V(1)(D), up to five (5) extra points will be given to applications that include committed non-Federal resources that significantly expand the project's scope. However, applicants are instructed that the project budget submitted with the application must include all necessary and sufficient funds, without reliance on other contracts, grants, or awards, to implement the applicant's proposed project activities and to achieve proposed project goals and objectives under this solicitation. If anticipated funding from another contract, grant, or award fails to materialize, USDOL will not provide additional funding to cover these costs.

II. Award Information

Type of assistance instrument: Cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI(2). The duration of the project(s) funded by this solicitation is four (4) years. The start date of program activities will be negotiated upon awarding of the cooperative agreement, but will be no later than September 30, 2005.

Up to U.S. $5 million will be awarded under this solicitation. USDOL may award one or more cooperative agreements to one, several, or a partnership of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any sub-contractor proposed in the application before award of the cooperative agreement. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. See Section VI(2)(B) for further information on sub-contracts.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based, community-based, or public international organization 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, and the relationship with any partner organizations receiving funds must be set forth in an appropriate joint venture, partnership, or other contractual agreement. 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. See Section V(1)(B)(ii). **Please Note:** Applications from foreign government and quasi-government agencies 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/bkgrd.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(1)).

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 directed toward the U.S. Government will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, or loan.

2. Cost Sharing or Matching Funds

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 and is a rating factor worth up to five (5) additional points.

3. Other Eligibility Criteria

In accordance with 29 CFR Part 98, entities that are debarred or suspended from receiving federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation. In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from USDOL, other Federal agencies, and other organizations regarding past performance of organizations that have implemented or are implementing Child Labor Education Initiative projects, or other projects or activities for USDOL and other Federal agencies (see Section V(1)(B)). Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, USDOL will consider the performance of the organization's key personnel on existing projects with USDOL or other entities, the frequency of the organization's replacement of key personnel, and the quality and timeliness of such key personnel replacements. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

Faith-based organizations may apply for Federal funds under this solicitation. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of cooperative agreement recipients. Similarly, neutral, non-religious criteria that neither favor nor disfavor religion must be employed by Grantees in the selection of project beneficiaries and sub-contractors.

In addition, per the provisions outlined in Section 2 of Executive Order 13279 and 29 CFR 2.33(b), the U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. Funds awarded under this solicitation may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities.

IV. Application and Submission Information

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. Additional copies of the **Federal Register** 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

Applicants must submit one (1) blue ink-signed original, complete application in English, plus two (2) copies of the application. The application must consist of two (2) separate parts, as well as a table of contents and an abstract summarizing the application in not more than two (2) pages. The table of contents and the abstract are *not* included in the 45-page limit for Part II. Applicants should number all pages of the application.

Part I of the application, the cost proposal, must contain the Standard Form (SF) 424, Application for Federal Assistance and Sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm.* Copies of these forms are also available online from the General Services Administration 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 and any other accompanying charts or graphs must be written in 10–12 pitch font size.

Part II, the technical proposal, 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 the applicant will carry out the Statement of Work (Section I(2) of this solicitation) and address each of the Application Evaluation 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, and must include responses to the application evaluation criteria outlined in Section V(1) of this solicitation. Part II must include a preliminary project design document submitted in the format shown in Appendix A and discussed further in Section VI(3)(A). The application must include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

Applications will only be accepted in English. To be considered responsive to this solicitation, the application must consist of the above-mentioned separate parts. *Any applications that do not conform to these standards may be deemed unresponsive to this solicitation and will be rejected.* Standard forms and attachments are *not* included in the 45-page limit for Part II. However, any additional information not required under this solicitation will not be considered.

3. Submission Dates, Times, and Address

Applications must be delivered (by hand or mail) by 4:45 p.m., Eastern Time, July 11, 2005, to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, Attention: Lisa Harvey, Reference: Solicitation 05–03. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by non-Postal Service delivery services, such as Federal Express or UPS, will be accepted; however, the applicant bears the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will be considered unresponsive and will be rejected. Any application received at the Procurement Services Center after the deadline 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 the Government after receipt at USDOL at the address indicated; and/or

B. It was sent by registered or certified mail not later than the fifth calendar day before the deadline; 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 the deadline.

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.

Confirmation of receipt can be obtained from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington, DC area can be slow and erratic due to concerns involving contamination. All applicants must take this into consideration when preparing to meet the application deadline.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 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 is subject to USDOL approval and ordinarily should not exceed 10 percent of the project budget's direct costs and is expected to be 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 these cooperative agreements, vocational training for adolescents and income-generating alternatives for parents are allowable activities. However, Federal funds under these cooperative agreements cannot be used to provide micro-credits, revolving funds, or loan guarantees. **Please note:** USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities after award of the cooperative agreement. Alternative income-generating activities may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies.

iii. Awards will not allow reimbursement of pre-award costs.

B. The following activities are also unallowable under this solicitation:

i. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. In addition, Grantees may not provide direct cash transfers to communities, parents, or children. The funding for this program does not include authority for sub-grants and, as a matter of policy, USDOL does not allow for direct cash transfers to target beneficiaries. USDOL, however, would support the purchase of incidental items in the nature of ''participant support costs'' under OMB Circular A–122, Attachment B, No. 34, which are necessary to ensure that target children have access to schooling. These participant support costs may include such items as uniforms and school supplies, and the provision of tuition and transportation costs in the form of vouchers to the provider of services. If an applicant proposes the provision of participant support costs, the applicant must specify: (1) Why these activities and interventions are necessary, and how they will contribute to the overall project goals; and (2) how the disbursement of funds will be administered in order to maximize efficiency and minimize the risk of misuse. The applicant must also address how participant support costs being funded by the project will be made sustainable once the project is completed.

If proposed participant support costs are approved by USDOL, these items must be purchased or paid for directly by the Grantee or its sub-contractor(s), as opposed to handing cash directly to children or other individuals.

ii. Under these cooperative agreements, awareness raising and advocacy activities cannot include fund-raising or lobbying of the U.S. Federal, State or Local Governments (see OMB Circular A–122).

iii. In accordance with OMB Circular A–122, funds awarded under this cooperative agreement may be used to cover the costs of meetings and conferences, as long as the primary purpose of such an event is the dissemination of technical information. These costs include meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conference.

iv. USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host-countries government efforts or resources intended for child labor or education programs. Thus, Grantees may not provide any of the funds awarded under this cooperative agreement to foreign government entities, ministries, officials, or political parties. However, sub-contracts with foreign government agencies may be awarded to provide direct services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the countries is able to provide these services. The Grantee must receive prior USDOL approval before sub-contracting the provision of direct services to foreign government agencies.

v. Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Grantee to ensure compliance with these Executive Orders and laws. This provision must be included in all sub-

contracts issued under the cooperative agreement.

vi. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their sub-contractors, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their sub-contractors, that receive U.S. Government funds to fight trafficking in persons cannot lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. It is the responsibility of the Grantee to ensure its sub-contractors meet these criteria. (The U.S. Government is currently developing language to specifically address Public International Organizations' implementation of the above anti-prostitution prohibition. If a project under this solicitation is awarded to such an organization, appropriate substitute language for the above prohibition will be included in the project's cooperative agreement.)

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov.* For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

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 leveraged resources as described below in Section V(1)(D). Applicants are requested to prepare their technical proposal (45 page maximum) organized in accordance with Appendix A, and address all 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 design document described in Section VI(3)(A), and outlined in Appendix A. The applicant's proposal must describe in detail the proposed approach to comply with each requirement. Applicants will be rated based on their understanding of the child labor and education context in the host countries, as well as on the clarity and quality of information provided in the project design document.

This component of the application must demonstrate the applicant's thorough knowledge and understanding of the issues, barriers, and challenges involved in providing education to children engaged in or at risk of engaging in exploitive child labor, particularly its worst forms; best-practice solutions to address their needs; and the policy and implementing environment in the selected countries. When preparing the technical proposal, the applicant must follow the outline provided in Appendix A, and at minimum include a description of:

i. *Children Targeted*—The applicant must identify which and how many children are expected to receive direct and indirect services from the project, including the sectors in which they work, geographical location, and other relevant characteristics. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

Children are defined as persons under the age of 18 who have been engaged or at risk of engaging in the worst forms of child labor as defined by ILO Convention 182, or those under the legal working age of the countries and who are engaged or at risk of engaging in other hazardous and/or exploitive activities. Under this solicitation, at-risk children are defined as siblings of working children, or children living in areas with a high incidence of exploitive child labor.

ii. *Needs/Gaps/Barriers*—The applicant must describe the specific gaps/educational needs of the children targeted that the project will address.

Note: The number of children targeted by the project must be commensurate with the need in the geographical area or sector where the project will be implemented. In addition, the budget proposed should take into account the type of work in which the target children are currently engaged.

iii. *Proposed Strategy*—The applicant must discuss the proposed strategy to address gaps/needs/barriers of the children targeted and its rationale. Applicants will be rated based on the quality and pertinence of proposed strategies. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

iv. *Sustainability Plan*—The applicant must discuss a proposed plan for sustainability of project efforts. To USDOL, sustainability is linked to project impact and the ability of individuals, communities, and a nation to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including financial commitment and policy change) by project partners to continue the actions generated by the project, including enforcement of existing policies that target child labor and school attendance. Applicants will be rated based on the pertinence and appropriateness of the proposed sustainability plan.

v. *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 countries 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. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

vi. *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 will be rated based on the clarity and quality of the information provided in the work plan.

Note: Applicants are also encouraged to enroll one-quarter of the targeted children in educational activities during the first year of project implementation.

vii. *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 (enrollment, retention, and completion) and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award. Grantees will be responsible for entering information on each project beneficiary into this database system. Further 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 delivery of direct education and training opportunities to working children and those at risk of engaging in exploitive work, and the four goals of the Child Labor Education Initiative set out in Section I(1)(A). Because of the potentially significant links between hours worked, working conditions, and school performance, Grantees are encouraged to collect information to track this correlation among project beneficiaries. Applicants proposing innovative methodologies in this area will be rated more highly.

Please note: In addition to reporting on the common indicators, applicants will be expected to track the working status, conditions, and hours of targeted children, including the withdrawal of children from exploitive/hazardous working conditions. Applicants are also expected to explore cost-effective ways of assessing the impact of proposed services/interventions to indirect beneficiaries.

Applicants are expected to budget for costs associated with collecting and reporting on the common indicators (enrollment, retention, and completion), data management, tracking the working status children, and assessing the impact of services/interventions to indirect beneficiaries.

viii. *Budget/Cost Effectiveness*—The applicant must show how the budget reflects program goals and design in a cost-effective way to reflect budget/performance integration. The budget must be linked to the activities and outputs of the implementation plan listed above. The budget proposed should also take into account the type of work in which the target children are currently engaged.

This section of the application must 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 single audits or attestation engagements (as applicable); midterm and final evaluations; and other related costs. Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities, including costs associated with collecting information for and reporting on the common indicators. In addition, the budget should include a contingency provision, calculated at 5% of the project's total direct costs, for unexpected expenses essential to meeting project goals, such as host countries currency devaluations, security costs, etc. USDOL will not provide additional funding to cover unanticipated costs. Grantees must obtain prior approval from USDOL before using contingency funds. If these funds have not been exhausted toward the end of the project period, USDOL and the Grantee will determine whether it is appropriate to reallocate the funds to direct educational or training services or return the funds to USDOL.

Grantees should also budget for a facilitator-led project launch meeting in the target countries, which will allow key stakeholders to discuss issues of project design and monitoring.

When developing their applications, applicants are also expected to allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct and/or indirect administrative costs. Higher ratings 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 projected costs should be reported, as they will become part of the cooperative agreement upon award. In their cost proposal (Part I of the application), 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). An example of an Outputs Based Budget has been provided as Annex B.

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 engaging in or at risk of engaging in exploitive child labor, preferably in the countries of interest.

ii. *Country Presence*—Given the need to provide children engaged in the worst forms of child labor with immediate assistance in accessing educational and training opportunities, applicants will be evaluated on their ability to start up project activities soon after signing a cooperative agreement. Having country presence, or partnering with in-country organizations, presents the best chance of expediting the delivery of services to children engaged or at risk of engaging in the worst forms of child labor. In their application, applicants must address country presence; outreach to government and NGOs, including local and community-based organizations; and the ability of the organization to start up project activities in a timely fashion. Applicants may submit supporting documentation with their application demonstrating country presence and/or outreach to host government ministries and NGOs in each country. These attachments will not count toward the page limit.

Within 60 days of award, an applicant, or its partners, must be formally recognized by the host governments using the appropriate mechanism, *e.g.*, Memorandum of Understanding or local registration of the organization. An applicant must demonstrate, independently or through a relationship with another organization(s), 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.

iii. *Fiscal Oversight*—The organization shows evidence of a sound financial system.

If the applicant is a U.S.-based, non-profit organization already subject to the single audit requirements, the

applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an applicant is not in compliance with the requirements for completing their single audit, the application will be considered unresponsive and will be rejected.

If the applicant is a for-profit or foreign-based organization, a copy of its most current independent financial audit must accompany the application as an attachment.

Applicants should also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, and sub-contractors that are subject to the Single Audit Act. If the proposed partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment. Applicants may wish to review the audits of prospective organizations before deciding whether they want to partner with or sub-contract to them under an Education Initiative cooperative agreement.

Note to All Applicants: In order to expedite the screening of applications, and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and sub-contractors. These attachments will not count toward the application page limit.

USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports.

Note to All Applicants: If a copy of the most recent audit report is not submitted as part of the application, the application will be considered unresponsive and will be rejected. In addition, if the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected.

iv. *Coordination*—If two or more organizations are applying for the award in the form of a partnership or joint venture, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. Although each partner will bear independent legal liability for the entire project, the applicants must identify a lead organization and must submit the joint venture, partnership, or other contractual agreement as an attachment (which will not count toward the page limit). If a partnership between two or more organizations is proposed, applicants are encouraged to outline the deliverables, activities, and corresponding timeline for which each organization will be responsible for completing.

v. *Experience*—The application must include information on previous and current grants, cooperative agreements, or contracts of the applicant with USDOL and other Federal agencies that are relevant to this solicitation, including:

(a) The organizations for which the work was done;

(b) A contact person in that organization with his/her 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 must be provided in appendices and will not count against the maximum page requirement. USDOL reserves the right to contact the organizations listed and use the information provided in evaluating applications.

Note to All Applicants: In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from the Department and others regarding past performance of organizations already implementing Child Labor Education Initiative projects or activities for USDOL and others. Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, the performance of the organization's key personnel on existing projects with USDOL or other entities, whether the organization has a history of replacing key personnel with similarly qualified staff, and the timeliness of replacing key personnel, will also be taken into consideration when rating past performance. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

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.

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 who are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL.

Note to All Applicants: All key personnel must allocate 100 percent of their time to the project and be present within the target countries. Key personnel positions must not be combined. Proposed key personnel candidates must sign letters of agreement to serve on the project, and indicate availability to commence work within 30 days of cooperative agreement award. Applicants must submit these letters as an attachment to the application. (These will not count toward the page limit.) If key personnel letters of agreement to serve on the project are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

i. *Key personnel*—The applicant must identify all key personnel candidates proposed to carry out the requirements of this solicitation. ''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, as detailed in Section VI(2)(C), may not be replaced or have hours reduced without the approval of the Grant Officer. If key personnel candidates are not designated, the application will be considered unresponsive and will be rejected. **Note:** preference may be given to applicants who propose qualified key personnel who have extensive experience in the host countries.

(a) *A Project Director* who will be responsible for overall project management, supervision, administration, and implementation of the requirements of the cooperative agreement. He/she will establish and

maintain systems for project operations; ensure that all cooperative agreement deadlines are met and targets are achieved; maintain working relationships with project stakeholders and partners; and oversee the preparation and submission of progress and financial reports. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as: education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children; and monitoring and evaluation of basic education projects. Consideration will be given to candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates must also have knowledge of exploitive child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from exploitive child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language of the target countries, or at least one of the official languages if there is more than one, 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 of 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. A working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target countries.

(c) *A Monitoring and Evaluation Officer* who will oversee the implementation of the project's monitoring and evaluation strategies and requirements. This person should have at least three years of 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, database management, and knowledge of the Government Performance and Results Act. Individuals with a demonstrated ability to build capacity of the project team and partners in these domains will be given special consideration.

Information provided on key personnel candidates must include the following:

- The educational background and experience of all key personnel to be assigned to the project.
- The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.
- The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed by the applying organization or is dependent upon planned recruitment or sub-contracting.

ii. *Other Professional Personnel*—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation. The applicant must also indicate whether the proposed work by other professional personnel will be performed by persons currently employed by the organization or is dependent upon planned recruitment or sub-contracting.

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.

Note: Applicants will be rated based on the clarity and quality of the information provided in the management plan.

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, as well as a description of the roles and responsibilities of all key and professional personnel proposed. Resumes must be submitted as an attachment to the application and will not count toward the page limit. If resumes of key personnel candidates are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

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. The application must indicate whether the individual is currently employed by the applicant, and (if so) for how long.

D. Leveraging Resources (5 Points)

USDOL will give up to five (5) additional rating points to applications that include committed non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs or activities will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities, such as micro-credits, revolving funds, or loan guarantees, which are not directly allowable under the cooperative agreement. To be eligible for the additional points, the applicant must list the source(s) of resources, the nature, and possible activities anticipated with these resources under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc. Staff time of proposed key personnel may not be submitted as a leveraged resource.

2. Review and Selection Process

The Office of Procurement Services at USDOL will screen all applications to determine whether all required elements, as identified in section IV(2) above, are present and clearly identifiable. If an application does not include all of the required elements, including required attachments, it will be considered unresponsive and will be rejected. Once an application is deemed unresponsive, the Office of Procurement Services will send a letter to the applicant, which will state that the application was incomplete, indicate which document was missing from the application, and explain that the technical review panel will be unable to rate the application.

The following documents must be included in the application package in order for the application to be deemed complete and responsive:

i. A cost proposal.

ii. A technical proposal.

iii. The applicant's most recent audit report.

iv. Resumes of all key personnel candidates.

v. Signed letters of agreement to serve on the project from all key personnel candidates.

Each complete application will be objectively rated by a technical review 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 cost, the availability of funds, and other factors. If USDOL does not receive technically acceptable applications in response to this solicitation, USDOL reserves the right to terminate the competition and not make any award. 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 best and final 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. In addition, USDOL reserves the right to further negotiate program components after award, during the project design document submission and review process. See Section VI(3)(A).

Award of a cooperative agreement under this solicitation may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in the 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. 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 does not waive any cooperative agreement requirements and/or procedures.

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 ICLP'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 regulations, Executive Orders, applicable Office of Management and Budget (OMB) Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of U.S. government laws and 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 must also submit to an annual independent audit. Single audits conducted under the provisions of OMB Circular A–133 are to be submitted by U.S. based non-profit organizations to meet the annual independent audit requirement. For foreign-based and private for-profit Grantees, an attestation engagement, conducted in accordance with U.S. ''Government Auditing Standards,'' that includes an auditor's opinions on (1) compliance with the Department's regulations and the provisions of the cooperative agreement and (2) the reliability of the Grantee's financial and performance reports must be submitted to meet the annual audit requirement. Costs for these audits or attestation engagements 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 cooperative agreement, if applicable to a particular Grantee:

i. 29 CFR Part 2 Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

ii. 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.

iii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

v. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

vi. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vii. 29 CFR Part 93—New Restrictions on Lobbying.

viii. 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.

ix. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

x. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

xi. 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 single audits or attestation engagements (as applicable); closeout; mid-term and final evaluations; project-related document preparation, including deliverables; 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 all applicable to the implementation of projects awarded under this solicitation.

B. Sub-Contracts

The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. However, sub-contracts may be included as a budget line item.

All relationships between the Grantee and partner organizations receiving funds under this solicitation must be set forth in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be provided to USDOL as an attachment to the application; copies of such agreements will not count toward the page limit.

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. Sub-contracts awarded after the cooperative agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL.

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.

C. Key Personnel

As noted in Section V(1)(C), the applicant must list the individuals who have been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel (Project Director, Education Specialist, and Monitoring and Evaluation Officer) will be available to begin work on the project no later than 30 days after award.

After the cooperative agreement has been awarded and throughout the life of the project, Grantees agree to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for any key personnel to continue work on the project as planned. A Grantee may nominate substitute key personnel and submit the nominations to the GOTR. A Grantee may also propose reducing the hours of key personnel; however, a Grantee must obtain prior approval from the Grant Officer for all such changes to key personnel. If the Grant Officer is unable to approve the key personnel change, he/she reserves the right to terminate the cooperative agreement or disallow costs. **Please note:** As stated in Section V(1)(B)(v), the performance of the organization's key personnel on existing projects with USDOL or other entities, and whether the organization has a history of replacing key personnel with equally qualified staff, will be taken into consideration when rating past performance.

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 may involve only specified commitments for which a need existed during the cooperative agreement period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, unless a longer period of time is granted by USDOL.

All equipment purchased with project funds must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantee are expected to 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 are expected to 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 is expected to monitor the implementation of the program; report to USDOL on a semi-annual basis or more frequently if deemed necessary by USDOL; and undergo evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the cooperative agreement. The project budget must include funds to: plan, implement, monitor, report on, and evaluate programs and activities (including mid-term and final evaluations and annual single audits or attestation engagements, as applicable); 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 or within the project's region (e.g., Africa, Asia, Latin America, Middle East and North Africa, and Europe). Applicants based both within and outside the United States should also budget for travel by field staff and other key personnel to Washington, DC at the beginning of the project for a post-award meeting with USDOL. Indicators of project performance must also be proposed by a Grantee and approved by USDOL in the Performance Monitoring Plan, as discussed in Section VI(3)(D) below. Unless otherwise indicated, a Grantee must submit copies of all required reports to USDOL by the specified due dates. Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs.

Specific deliverables are the following:

A. Project Design Document

As stated in Sections I(2) and IV(2), applications must include a preliminary

project design document in the format described in Appendix A, with design elements linked to a logical framework matrix. (Note: The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical Child Labor Education Initiative project is available at *http://www.dol.gov/ilab/grants/bkgrd.htm*). The preliminary project document must include all sections identified in Appendix A, including a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable, and project budget. The narrative must address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section (Section V(1)(A) above).

Within six months after the time of the award, the Grantee must deliver the final project design document, based on the application written in response to this solicitation, including the results of additional consultation with stakeholders, partners, and USDOL. The final project design document must 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 (SF 269) to USDOL on a semi-annual basis by 31 March and 30 September of each year during the cooperative agreement period. However, USDOL reserves the right to require up to four reports a year, as necessary. Also, a copy of the Federal Cash Transactions Report (PSC 272) must be submitted to USDOL upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

C. Annual Work Plan

Grantees must develop an annual work plan within six months of project award for approval by USDOL so as to ensure coordination with other relevant social actors throughout the countries. Subsequent annual work plans must be delivered no later than one year after the previous one.

D. Performance Monitoring and Evaluation Plan

Grantees must develop a performance monitoring and evaluation plan in collaboration with USDOL, 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 must be developed in conjunction with the logical framework project design and common indicators for reporting selected by USDOL. The plan must include a limited number of key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection is expected to be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan must be submitted to USDOL 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 must be external and independent in nature. A Grantee must respond in writing to any comments and recommendations provided in the mid-term evaluation report. The budget must include the projected cost of mid-term and final evaluations.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

VIII. Other Information

1. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL, for approval, all media-related, awareness-raising, and educational materials developed by the Grantee or its sub-contractors before they are reproduced, published, or used. USDOL considers such materials to include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. USDOL will review materials for technical accuracy and other issues.

In addition, USDOL reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes, and authorize others to do so, all materials that are developed or for which ownership is purchased by the Grantee under an award.

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 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 the MPG. In consultation with USDOL, 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 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 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.''

3. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 23rd day of May, 2005.

Lisa Harvey,

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 in Annex A)
   - 3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework matrix in Annex A)
   - 3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration in Annex B)
4. Project Monitoring and Evaluation
   - 4.1 Indicators and Means of Verification
   - 4.2 Baseline Data Collection Plan
5. Institutional and Management Framework
   - 5.1 Institutional Arrangements for Implementation
   - 5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities
   - 5.3 Other Donor or International Organization Activity and Coordination
   - 5.4 Project Management Organizational Chart
6. Inputs
   - 6.1 Inputs provided by USDOL
   - 6.2 Inputs provided by the Grantee
   - 6.3 National and/or Other Contributions
7. Sustainability

Annex A: Full presentation of the Logical Framework matrix

Annex B: Outputs Based Budget example

(A worked example of a Logical Framework matrix, an Outputs Based Budget, and other background documentation for this solicitation are available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm*).

[FR Doc. 05–10621 Filed 5–26–05; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of data concerning the operation and accuracy of state worker profiling models. A copy of the proposed information collection request (ICR) can be obtained at no charge by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 26, 2005.

ADDRESSES: Scott Gibbons, Office of Workforce Security, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210. e-mail: *gibbons.scott@dol.gov*; phone: 202–693–3008; fax: 202–693–2874.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, e-mail: *gibbons.scott@dol.gov*; phone: 202–693–3008; fax: 202–693–2874.

SUPPLEMENTARY INFORMATION:

I. Background

Worker Profiling and Reemployment Services (WPRS), as specified in Pub. L. 103–152, is a system that attempts to identify UI claimants with a high potential for exhausting their regular benefit entitlement and directs them to re-employment services to hasten their return to work. Under this program, the worker profiling model is responsible for discriminating between those claimants who are likely to exhaust their UI benefits and those who are not.

In spite of the importance the model plays in this process, limited research has been done to determine how effective states are at targeting those most likely to exhaust their benefits. There are barriers to performing clear research on this topic. The purpose of this study is to improve state worker profiling models by: (1) Establishing an approach for evaluating the accuracy of worker profiling models, (2) applying this approach to current state models to determine how effective they are at predicting Unemployment Insurance (UI) benefit exhaustion, and (3) based on the results, developing guidance on best practices in operating and maintaining worker profiling models. Ideally, we would like to evaluate every state's profiling model. In order to accomplish this goal, the proposed data collection will be mandatory.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

This project has two primary objectives. The first objective is to collect information concerning the characteristics of worker profiling models that states currently use. To accomplish this, a survey on the operational and structural aspects of the worker profiling models will be sent to states. The second objective is to evaluate the accuracy of predictions from worker profiling models. To accomplish this, a methodology to evaluate model performance has been developed. Data provided by states will be used to measure and analyze the accuracy of state worker profiling models, and to identify, to the greatest extent possible given the available data and analysis results, factors correlated with good or poor model performance. A report detailing the results of the analysis and the collected survey information will be produced. This report will summarize the analysis into conclusions and/or suggestions (*i.e.,* best practices) for how states can improve systems that are under-performing.

Type of Review: New.

Agency: U.S. Department of Labor, Employment and Training Administration.

Title: Evaluation of State Worker Profiling Models.

Affected Public: State Government Workforce Agencies.

Cite/Reference/Form/etc.: See chart below.

Total Respondents: 53.

Frequency: One-time survey and data collection.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
Survey	53	One-time request	53	2	106
Data request	53	One-time request	53	30	1590
Totals			106		1696

Total Burden Cost (capital/startup): Based on an hourly rate of $31.38 for fiscal year 2005, estimated cost burden is $53,220.48.

Total Burden Cost (operating/maintaining): There are no ongoing costs for this project.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 23, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E5–2692 Filed 5–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

ETA–581 Report on Contribution Operations; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of approval of Form ETA 581, Contribution Operations. A copy of the proposed information collection request (ICR) can be obtained directly from the ETA Web Page: *http://www.doleta.gov/Performance/Guidance/OMBControlNumber.cfm* or by contacting the office listed below in the **ADDRESSEE** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSEE** section below on or before July 26, 2005.

ADDRESSEE: Bill Whitt, Room S–4522, 200 Constitution Avenue, NW., Washington, DC 20210; telephone number: 202–693–3219 (this is not a toll-free number); internet address: *whitt.bill@dol.gov;* facsimile number: 202–693–3229.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workforce Security (OWS) of the Employment and Training Administration (ETA) has responsibility for the Tax Performance System (TPS) which evaluates the employer-related or tax functions of the UI program. The Contribution Operations report (Form ETA 581) is a comprehensive report of each state's UI tax operations and is essential in providing quarterly tax performance data to OWS. ETA 581 data are the basis for measuring the performance and effectiveness of the states' UI tax operations. Using ETA 581 data, the TPS program measures performance, accuracy, and promptness in employer registration (status determinations), report delinquency, collections (accounts receivable), and the audit function.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

It is important that approval of the ETA 581 report be extended because this report is the only vehicle for collection of information required under the TPS program. If ETA 581 data were not collected, there would be no basis for determining the adequacy of funding for states' UI tax operations, making projections and forecasts in the budgetary process, nor measuring program performance and effectiveness.

The ETA 581 accounts receivable data are necessary in the preparation of complete and accurate financial statements for the Unemployment Trust Fund (UTF) and the maintenance of a modified accrual system for UTF accounting.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: ETA 581, Report on Contribution Operations.

OMB Number: 1205–0178.

Agency Number: ETA 581.

Recordkeeping: Respondent is expected to maintain data which support the reported data for three years.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 581.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 8.5 hours.

Estimated Total Burden Hours: 1,802.

Total Burden Cost (operating/maintaining): $-0-.

Comments submitted in response to this comment request will be summarized and/or included in the

request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 9, 2005.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E5–2691 Filed 5–26–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

Illinois
- IL20030001 (Jun. 13, 2003)
- IL20030003 (Jun. 13, 2003)
- IL20030011 (Jun. 13, 2003)
- IL20030012 (Jun. 13, 2003)
- IL20030013 (Jun. 13, 2003)
- IL20030014 (Jun. 13, 2003)
- IL20030015 (Jun. 13, 2003)
- IL20030016 (Jun. 13, 2003)
- IL20030042 (Jun. 13, 2003)
- IL20030047 (Jun. 13, 2003)
- IL20030049 (Jun. 13, 2003)
- IL20030058 (Jun. 13, 2003)
- IL20030059 (Jun. 13, 2003)

Volume V:

Iowa
- IA20030004 (Jun. 13, 2003)
- IA20030005 (Jun. 13, 2003)
- IA20030006 (Jun. 13, 2003)
- IA20030016 (Jun. 13, 2003)
- IA20030037 (Jun. 13, 2003)
- IA20030040 (Jun. 13, 2003)
- IA20030054 (Jun. 13, 2003)
- IA20030059 (Jun. 13, 2003)

Kansas
- KS20030006 (Jun. 13, 2003)
- KS20030008 (Jun. 13, 2003)
- KS20030010 (Jun. 13, 2003)
- KS20030012 (Jun. 13, 2003)
- KS20030015 (Jun. 13, 2003)

Oklahoma
- OK20030030 (Jun. 13, 2003)
- OK20030034 (Jun. 13, 2003)

Texas
- TX20030125 (Jun. 13, 2003)

Volume VI:

Montana
- MT20030001 (Jun. 13, 2003)
- MT20030004 (Jun. 13, 2003)
- MT20030005 (Jun. 13, 2003)
- MT20030007 (Jun. 13, 2003)
- MT20030035 (Jun. 13, 2003)

North Dakota
- ND20030007 (Jun. 13, 2003)
- ND20030011 (Jun. 13, 2003)
- ND20030018 (Jun. 13, 2003)
- ND20030019 (Jun. 13, 2003)

South Dakota
- SD20030002 (Jun. 13, 2003)
- SD20030007 (Jun. 13, 2003)
- SD20030010 (Jun. 13, 2003)

Volume VII:

Hawaii
- HI20030001 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by

subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 19th day of May 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–10345 Filed 5–26–05; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: June 13, 2005 from 10 a.m. to 11 a.m.

ADDRESSES: The U.S. Capitol Building, Room H–137, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard H. Hunt, Director; Center for Legislative Archives; (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Capitol Visitor Center Update on Exhibitry/Construction; Association of Centers for the Study of Congress; Institute on the Teaching of Congress and the Presidency; Web Harvest; Fourth Advisory Committee on the Records of Congress Report; Activities Report of the Center for Legislative Archives; Other current issues and new business.

The meeting is open to the public.

Dated: May 23, 2005.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 05–10628 Filed 5–26–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times: June 26, 2005; 7 p.m.–9 p.m. (Closed). June 27, 2005; 7:45 a.m.–9:30 p.m. (Open 8:15–12:15, 1:15–3:45). June 28, 2005; 8 a.m.–4 p.m. (Closed).

Place: Rensselaer Polytechnic Institute, Troy, New York.

Type of Meeting: Part Open.

Contact Person: Dr. David L. Nelson, Program Director, Solid State Chemistry Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4932.

Agenda: June 26, 2005—Closed. June 27, 2005—Open for Director's overview of Nanoscale Science and Engineering Center and presentations. June 28, 2005—Closed to review and evaluate progress of Nanoscale Science and Engineering Center.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 24, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–10654 Filed 5–26–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Design Information Questionnaire—IAEA—N–71 and associated Forms N–72, N–73, N–74, N–75, N–91, N–92, N–93, N–94.

3. *The form number if applicable:* IAEA Form N–71 and associated Forms N–72, N–73, N–74, N–75, N–91, N–92, N–93, N–94.

4. *How often the collection is required:* Approximately 1 time annually.

5. *Who will be required or asked to report:* Licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.

6. *An estimate of the number of annual responses:* 1.

7. *The estimated number of annual respondents:* 1.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 360 reporting hours (360 hours per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* Licensees of facilities that appear on the U.S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71 (and the appropriate associated IAEA Form) or Form N–91, to provide information concerning their installation for use of the International Atomic Energy Agency.

A copy of the final supporting statement may be viewed free of charge

at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 27, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John Asalone, Office of Information and Regulatory Affairs (3150–0056), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@ombeop.gov* or submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 23rd day of May, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E5–2689 Filed 5–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 AND 50–412 and License Nos. DPR–66 and NPF–73]

FirstEnergy Nuclear Operating Company (FENOC) Receipt of Request for Action Under 10 CFR 2.2206

Notice is hereby given that by petition dated April 12, 2005, Mr. David Lochbaum of the Union of Concerned Scientists requested that the Nuclear Regulatory Commission (NRC) take action with regard to Beaver Valley Power Station, Unit Nos. 1 and 2. The petitioner requests that the NRC take enforcement action against FENOC and impose a civil penalty of at least $55,000.

As the basis for this request, the petitioner states that the licensee's February 9, 2005, license renewal submittal was not complete and accurate in all material respects and that this is a violation of 10 CFR 50.9, paragraph (a) which requires in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects.

The petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The petition has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. Mr. Lochbaum declined to meet with or participate in a telephone conference with the Petition Review Board on this matter stating that all pertinent facts were contained within his petition. Copies of the petition are available for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* (Accession No. ML051100297). Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 20th day of May 2005.

J. E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2687 Filed 5–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company, LLC; Point Beach Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix R, Section IlI.G.1.a for Facility Operating License Nos. DPR–24 and DPR–27, issued to Nuclear Management Company, LLC (NMC), the licensee, for operation of the Point Beach Nuclear Plant (PBNP), Units 1 and 2, located in Manitowoc County, Wisconsin. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt 10 CFR Part 50, Appendix R, Section III.G.1.a as it applies to the PBNP, Unit 1 auxiliary and turbine buildings; and the PBNP, Unit 2 auxiliary and turbine buildings, and the control building. The exemption requested is from the requirement that, ''one train of systems necessary to achieve and maintain hot shutdown from either the control room or emergency control station(s) is free of fire damage,'' as it applies to the PBNP, Unit 1 auxiliary and turbine buildings; the PBNP, Unit 2 auxiliary and turbine buildings, and the control building. Specifically, NMC has asked for a repair consisting of powering a dedicated air compressor from one of two pre-planned 480 volt power sources using pre-staged power cords and connecting the air compressor to nitrogen bottle manifolds on one or both reactor units using pre-staged pneumatic hose with quick connect fittings. The repair would be required no earlier than 8 hours into an event in which instrument air is disabled.

The proposed action is in accordance with the licensee's application dated March 5, 2004, as supplemented by letter dated November 8, 2004.

The Need for the Proposed Action

Appendix R, Section Ill.G.1.a of 10 CFR Part 50 requires that, ''one train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage.'' Appendix R, Section Ill.L.1 of 10 CFR Part 50 requires that an alternative or dedicated shutdown capability shall be able to, among other things, ''(c) achieve and maintain hot standby conditions for a pressurized water reactor (PWR)''; and ''(d) achieve cold shutdown conditions within 72 hours.'' NRC Inspection Report 50–266/2003–007; 50–301/2003–007, dated February 4, 2004, documents a Non-Cited Violation of Appendix R, Section III.L.1.c, in that NMC, ''failed to ensure, without the need for 'hot standby repairs,' adequate control air to the speed controllers for the charging pumps during a postulated fire requiring an alternative shutdown method.'' The installed backup nitrogen gas bottle bank (for the charging pump speed controllers) meets the requirements of the regulation, with the exception that it is of limited capacity. This means that the hot shutdown conditions could not be maintained indefinitely while relying only on the installed bottle bank. However, the 8 to 14 hour capacity of the bottle banks is

ample time to extinguish the fire, achieve stable plant conditions in hot shutdown, augment staff with personnel from the emergency response organization, and connect dedicated power cabling and hoses to the dedicated compressor using the furnished plugs and quick connect fittings (*i.e.*, no tools required).

Because the bottle banks, hoses, cables, and compressor are all located in areas that would not be affected by the fires of concern, none would be damaged. Thus, the proposed exemption is fully consistent with the intent of the applicable sections of 10 CFR Part 50, Appendix R, and literal compliance is not necessary to achieve the underlying purpose of the rules.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that pursuant to 10 CFR 50.12(a)(2)(ii), the level of fire safety provided is equivalent to the technical requirements of 10 CFR Part 50 Appendix R, Section IlI.G.1.a. As such, the requested exemption does not pose an undue risk to the health and safety of the public.

The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Point Beach Nuclear Plant, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on April 4, 2005, the NRC staff consulted with the Wisconsin State official, Jeffery Kitsembel of the Public Service Commission of Wisconsin, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 5, 2004, as supplemented by letter dated November 8, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of May, 2005.

For the Nuclear Regulatory Commission.

Harold K. Chernoff,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2688 Filed 5–26–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. PAPO–00; ASLBP No. 04–829–01–PAPO]

Atomic Safety and Licensing Board; In the Matter of U.S. Department of Energy (High Level Waste Repository: Pre-Application Matters)

May 23, 2005.

Before Administrative Judges: Thomas S. Moore, Chairman, Alex S. Karlin Alan S. Rosenthal.

Order

The Pre-License Application Presiding Officer (PAPO) Board held its second case management conference in this proceeding on May 18, 2005. The Department of Energy (DOE), the NRC Staff, the State of Nevada (State), the Nuclear Energy Institute (NEI), and the Nuclear Information and Research Service (NIRS) attended the conference. During this meeting the Board heard discussion on a written request, filed by DOE on May 12, 2005, that the Board establish uniform requirements for the retention of e-mails and other documents that constitute or may constitute documentary material as defined in 10 CFR 2.1001. DOE suggested that document retention requirements should be part of the procedures required under 10 CFR 2.1009, and that participation as a party in this proceeding requires substantial compliance with such procedures under 10 CFR 2.1012(b). DOE, the NRC Staff, the State, and NIRS participated in the discussion of this proposal.

Upon consideration of this matter, and hearing no objection from any of the participants during the May 18, 2005 conference, the Board agreed that the matter warranted further consideration and attention. The Board is concerned that, absent a uniform procedure prescribed by a case management order, some of the current participants, as well as other potential parties, might not have timely instituted documentary material retention policies or been aware of the need to adopt and follow retention policies for such material. The development and specification at this time of reasonable uniform documentary material retention procedures should enable all current participants and potential parties to avoid unnecessary burdens and expense.

Accordingly, the Board orders the participants attending the second case management conference to meet and to confer for the purpose of developing a joint proposed minimum acceptable

standard of documentary material retention for this proceeding. The joint proposal shall be submitted to the Board by July 1, 2005. In the event the participants cannot agree on a joint proposal, then DOE, the NRC Staff, and the State each shall submit by that date their respective, individual proposals. All other potential parties are encouraged to participate in the meeting with DOE, the State, and the NRC Staff and to contribute to the discussion and proposed resolution of these issues. If agreement is not possible, NEI, NIRS, or any other participating potential party may submit an independent proposal to the Board by July 1, 2005. Any potential party may submit comments on the proposals of any other potential party by July 8, 2005.

At the second case management conference, counsel for DOE offered to host the meeting of the participants and potential participants. All of the participants agreed that the meeting should be held on *Wednesday, June 15, 2005 at 10 a.m., EDT, in the main conference room of the law firm of Hunton & Williams (counsel for DOE), 1900 K Street, NW., 12th floor, Washington, DC.* Any person desiring to participate in the meeting and discussion of this issue should provide telephone or e-mail notice, not later than 5 p.m. EDT, June 8, 2005, to counsel for DOE via Ms. Belinda Wright, telephone 804–788–8581, e-mail *bwright@hunton.com.* Such notice shall contain the following information: (a) Name of person desiring to attend; (b) organizational affiliation, if any; (c) daytime phone number; (d) e-mail address; (e) mailing address; and (f) statement as to whether the person intends to participate in person, or desires to participate remotely in the event that electronic facilities can be made available.

DOE, the State, NRC Staff, NEI, and NIRS are strongly encouraged, through appropriate notices on their respective web sites, and other reasonable methods, to inform the public, their stakeholders, and any other interested persons or entities of the proposal to develop uniform procedures, applicable to all potential parties, concerning the retention of e-mails and other documents.

It is so Ordered.

Dated in Rockville, Maryland, on May 23, 2005.

For the Pre-license Application Presiding Officer Board.

Thomas S. Moore,

Chairman, Administrative Judge.

[FR Doc. E5–2690 Filed 5–26–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meetings.

SUMMARY: The Office of Management and Budget announces a meeting of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: A public meeting of the Panel will be held on June 14, 2005 beginning at 9 a.m. eastern time and ending no later than 5 p.m.

ADDRESSES: The June 14, 2005 meeting will be held at the Federal Deposit Insurance Corporation (FDIC), Basement Auditorium, 801 17th Street, NW., Washington, DC 20434. The public is asked to pre-register one week in advance for the meeting due to security and seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning this meeting, the Acquisition Advisory Panel, or to pre-register for the meeting, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov,* phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time must contact Ms. Anne Terry, AAP Staff Analyst, in writing at: *anne.terry@gsa.gov,* by FAX at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting.

SUPPLEMENTARY INFORMATION:

(a) Background: The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meeting. The Panel working groups, established at the February 28, 2005 public meeting of the AAP (see *http://www.acqnet.gov/aap* for a list of working groups), will report on the scope of their review during this meeting, which may include any follow-up recommendations for additional working groups or other issues to be examined. The Panel also expects to hear from additional invited speakers from the public and private sectors who will address issues related to the Panel's statutory charter. In addition to working group scope reports and invited speakers, the Panel also invites oral public comments at this meeting and has reserved an estimated one hour for this purpose. Members of the public wishing to address the Panel during the meeting must contact Ms. Anne Terry, in writing, as soon as possible to reserve time (see contact information above). Additional time for oral public comments is expected at future public meetings to be announced in the **Federal Register**.

(b) Availability of Materials for the Meetings: Please see the Acquisition Advisory Panel Web site for any available materials, including draft agendas, for this meeting (*http://www.acqnet.gov/aap*). Questions/issues of particular interest to the Panel are also available to the public on this Web site. The Panel asks that the public focus on these questions/issues when presenting oral public comments or submitting written statements to the Panel. The public may also obtain copies of Initial Working Group Reports presented at the March 30, 2005 public meeting and public presentations made to the Panel at its Web site under ''Meeting Materials'' at *http://www.acqnet.gov/aap.*

(c) Procedures for Providing Public Comments: It is the policy of the Acquisition Advisory Panel to accept written public statements of any length, and to accommodate oral public comments whenever possible. To facilitate Panel discussions at its meetings, the Panel may not accept oral comments at all meetings. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter, working group topics, and posted questions/issues, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Oral Comments: Speaking times will be confirmed by Panel staff on a ''first-come/first-serve'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes for the June 14th meeting. Because Panel members may ask questions, reserved times will

be approximate. Interested parties must contact Ms. Anne Terry, in writing (via mail, e-mail, or fax identified above for Ms. Terry) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Terry one week in advance of the meeting.

Written Statements: Although written statements are accepted until the date of the meeting (unless otherwise stated), written statements should be received by the Panel Staff at least one week prior to the meeting date so that they may be made available to the Panel for their consideration prior to the meeting. Written statements should be supplied to the DFO at the address/contact information given in this **Federal Register** Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format). **Please note:** Since the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations or written statements will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(d) Meeting Accommodations: Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 05–10707 Filed 5–25–05; 9:56 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Proposed Collections; Comment Request

Summary: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) publishes periodic summaries of proposed data collections. The information collections numbered below are pending at RRB and will be submitted to OMB within 60 days from the date of this notice.

Comments are Invited On: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and Purpose of Information Collection

Application for Benefits Due but Unpaid at Death; OMB 3220–0055. Under section 2(g) of the Railroad Unemployment Insurance Act (RUIA), benefits under that Act that accrued but were not paid because of the death of an employee shall be paid to the same individual(s) to whom benefits are payable under section 6(a)(1) of the Railroad Retirement Act. The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5.

The RRB provides Form UI–63 for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes minor editorial and formatting changes to the UI–63. A column has been added to request the telephone number of the payer of burial expenses and a check box has been added to remind survivors of the deceased employee that proof of relationship is needed to determine the person(s) entitled to unpaid benefits due at the time of death. The completion time for the UI–63 is estimated at 7 minutes. The RRB estimates that approximately 200 responses are received annually.

2. Title and Purpose of Information Collection

Employee's Certification; OMB 3220–0140. Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if any of the employee's previous marriages create an impediment either to the current marriage between the employee and his or her spouse or to the marriage which previously existed between the employee and his or her former spouse.

The requirements relating to obtaining evidence for determining valid marital relationships are prescribed in 20 CFR 219.30 through 219.35.

Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G–346 to obtain the information needed for determining if any of the employee's previous marriages create an impediment to the current marriage. Form G–346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes to change the function of Form G–346 by requiring that it be completed in all cases where the employee and spouse do not file simultaneously. Currently, Form G–346 is only completed when the spouse filed for an annuity more than 1 year after the employee filed. The RRB also proposes to make minor editorial and formatting changes to Form G–346. The RRB estimates that 7,610 G–346's will be completed annually at an estimated completion time of five minutes per response. Total respondent burden is estimated at 634 hours.

Additional Information or Comments: To request more information regarding any of the information collections listed above or to obtain copies of the information collection justifications, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collections should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–10631 Filed 5–26–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26876; 812–13111]

The Korea Fund; Notice of Application

May 23, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

APPLICANT: The Korea Fund, Inc. (the ''Fund'').

ACTIONS: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order that would permit in-kind repurchases of shares of the Fund held by certain affiliated shareholders of the Fund.

FILING DATES: The application was filed on July 21, 2004, and amended on May 20, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 17, 2005, and should be accompanied by proof of service on applicants, 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. Applicant, Bruce Rosenblum, Esq., c/o Deutsche Investment Management Americas, Inc., 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 551–6871, or Janet M. Grossnickle, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. The Fund, a Maryland corporation, is registered under the Act as a closed-end management investment company. The Fund's investment objective is to provide long-term capital appreciation through investment primarily in equity securities of Korean companies. Applicant states that under normal circumstances it invests at least 80% of its net assets in securities listed on the Korea Stock Exchange.[1] Shares of the Fund are listed and trade on the New York Stock Exchange and the Osaka Stock Exchange. Deutsche Investment Management Americas Inc. (the ''Investment Manager'') is registered under the Investment Advisers Act of 1940 and serves as the investment manager to the Fund.

2. The Fund proposes to repurchase up to 50% of its outstanding shares at 98% of net asset value (''NAV'') on an in-kind basis with a pro rata distribution of the Fund's portfolio securities (with exceptions generally for odd lots, fractional shares, and cash items) (the ''Initial Repurchase Offer''). The Fund also proposes to conduct six subsequent semi-annual repurchase offers, also on an in-kind basis, each for 10% of the Fund's then outstanding shares at 98% of NAV (''Subsequent Repurchase Offers'' together with the Initial Repurchase Offer, the ''In-Kind Repurchase Offers'').[2] The In-Kind Repurchase Offers will be made pursuant to section 23(c)(2) of the Act and conducted in accordance with rule 13e–4 under the Securities Exchange Act of 1934.

3. Applicant states that the In-Kind Repurchase Offers are designed to accommodate the needs of shareholders who wish to participate in the In-Kind Repurchase Offers and long-term shareholders who would prefer to remain invested in a closed-end investment vehicle. Under the In-Kind Repurchase Offers, only participating shareholders will pay taxes on the gain on appreciated securities distributed in the In-Kind Repurchase Offers. Non-participating shareholders would avoid the imposition of a significant tax liability, which would occur if the Fund sold the appreciated securities to make payments in cash. Applicant further states that the In-Kind Repurchase Offers' in-kind payments will minimize market disruption, while allowing the Fund to avoid a cascade of distributions, required to preserve its tax status, that would reduce the size of the Fund drastically. Applicant requests relief to permit any shareholder of the Fund who is an ''affiliated person'' of the Fund solely by reason of owning, controlling, or holding with the power to vote, 5% or more of the Fund's shares (''Affiliated Shareholder'') to participate in the proposed In-Kind Repurchase Offers.

Applicant's Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, from knowingly purchasing or selling any security or other property from or to the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person. Applicant states that to the extent that the In-Kind Repurchase Offers would constitute the purchase or sale of securities by an Affiliated Shareholder, the transactions would be prohibited by section 17(a). Accordingly, applicant requests an exemption from section 17(a) of the Act to the extent necessary to permit the participation of Affiliated Shareholders in the In-Kind Repurchase Offers.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions, from any provision of the Act or rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant asserts that the terms of the In-Kind Repurchase Offers meet the requirements of sections 17(b) and 6(c) of the Act. Applicant asserts that neither the Fund nor an Affiliated Shareholder has any choice as to the portfolio securities to be received as proceeds

[1] Applicant states that as of April 13, 2005, approximately 97% of its assets were invested in equity stocks of Korean issuers, 92% of which were listed on the Korea Stock Exchange.

[2] Each Subsequent Repurchase Offer would be conducted only if the Fund's shares trade on the New York Stock Exchange at an average weekly discount from NAV greater than 5% during a 13-week measuring period ending the last day of the preceding half-year.

from the In-Kind Repurchase Offers. Instead, shareholders will receive their pro rata portion of each of the Fund's portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 (''Securities Act''), and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-residents other than through qualified investment vehicles, or whose distributions would otherwise be contrary to applicable local laws, rules or regulations, and (c) certain portfolio assets that involve the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterparty to the transaction. Moreover, applicant states that the portfolio securities to be distributed in the In-Kind Repurchase Offer will be valued according to an objective, verifiable standard, and the In-Kind Repurchase Offers are consistent with the investment policies of the Fund. Applicant also believes that the In-Kind Repurchase Offers are consistent with the general purposes of the Act because the interests of all shareholders are equally protected and no Affiliated Shareholder would receive an advantage or special benefit not available to any other shareholder participating in the In-Kind Repurchase Offers.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Applicant will distribute to shareholders participating in the In-Kind Repurchase Offers an in-kind *pro rata* distribution of portfolio securities of applicant. The *pro rata* distribution will not include: (a) Securities that, if distributed, would be required to be registered under the Securities Act; (b) securities issued by entities in countries that restrict or prohibit the holdings of securities by non-residents other than through qualified investment vehicles, or whose distribution would otherwise be contrary to applicable local laws, rules or regulations; and (c) certain portfolio assets, such as derivative instruments or repurchase agreements, that involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction. Cash will be paid for that portion of applicant's assets represented by cash and cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, applicant will distribute cash in lieu of fractional shares and accruals on such securities. Applicant may round down the proportionate distribution of each portfolio security to the nearest round lot amount and will distribute the remaining odd lot in cash. Applicant may also distribute a higher *pro rata* percentage of other portfolio securities to represent such items.

2. The securities distributed to shareholders pursuant to the In-Kind Repurchase Offers will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

3. The securities distributed to shareholders pursuant to the In-Kind Repurchase Offers will be valued in the same manner as they would be valued for purposes of computing applicant's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on a public securities market, or, if the securities are not listed on an exchange or a public securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

4. Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any In-Kind Repurchase Offer occurs, the first two years in an easily accessible place, a written record of such In-Kind Repurchase Offer that includes the identity of each shareholder of record that participated in such In-Kind Repurchase Offer, whether that shareholder was an Affiliated Shareholder, a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–2686 Filed 5–26–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5091]

30-Day Notice of Proposed Information Collection: Form DS–3057, Medical Clearance Update, OMB 1405–0131

ACTION: Notice of request for public comments.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Medical Clearance Update.

OMB Control Number: 1405–0131.

Type of Request: Extension of Currently Approved Collection.

Originating Office: Office of Medical Services, M/MED/EX.

Form Number: DS–3057.

Respondents: Foreign Service Officers, Federal Government Employees and family members.

Estimated Number of Respondents: 9,800.

Estimated Number of Responses: 9,800.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 4,900.

Frequency: On occasion.

Obligation to Respond: Required to Obtain or Retain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 27, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

E-mail: *Katherine_T._Astrich@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

Mail (paper, disk, or CD-ROM submissions): Office of Foreign Missions, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Susan Willig, Department of State,

Office of Medical Services, SA–1 Room L101, 2401 E St., NW., Washington, DC 20052–0101, telephone 202–663–1754, or *willigsp@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

Enhance the quality, utility, and clarity of the information to be collected.

Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Form DS–3057 is designed to collect medical information for the Office of Medical Services to decide whether a federal employee and family members will have sufficient medical resources at a diplomatic mission abroad to maintain health and fitness.

Methodology: The information collected will be collected through the use of an electronic forms engine or by hand written submission using a pre-printed form.

Dated: April 28, 2005.

Maria C. Melchiorre,

Administrative Officer, Office of Medical Services, Department of State.

[FR Doc. 05–10653 Filed 5–26–05; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Barnstable Municipal Airport, Hyannis, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments.

SUMMARY: The FAA is requesting public comment on the Town of Barnstable, MA request to change a portion (6.94 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located behind the Airport's East Ramp and adjacent to the railroad right-of-way on land located on along the former Mary Dunn Way. The land is currently a land locked vacant parcel. The parcel will be leased to the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority (''Authority'') for use as a parking area during the months of July and August. During the remainder of the year, both the Authority and Airport will use the lot for overflow parking. The property was acquired under the Surplus Property Act and Airport Development Aid Projects 6–25–0025–07 and 6–25–0025–10. These lease term is for five years with three additional five-year terms. Should the land be required for airport purposes, the lease can be terminated at any time upon six month written notice to the Authority.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Documents are available for review by appointment by contacting Dr. Quincy Mosby, Manager, Barnstable Municipal Airport, Hyannis, MA at Barnstable Municipal Airport, 480 Barnstable Road, Hyannis, MA 02601, Telephone 508–775–2020 or by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts on May 10, 2005.

Bryon H. Rakoff,

Acting Manager, Airports Division, New England Region.

[FR Doc. 05–10598 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at City-County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Rick Allen, Mayor of City of Madras, at the following address: The Honorable Rick Allen, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington, 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the City-County Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On April 21, 2005, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than June 27, 2005.

The following is a brief overview of the request:

City-County Airport is proposing the release of approximately 2.52 acres of airport property so the property can be sold to the business wishing to locate in the airport industrial park. The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington on April 21, 2005.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 05–10599 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Miami International Airport, Miami-Dade County, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the Miami-Dade Aviation Department (MDAD) request to release a portion of airport property ±50.661 square feet/±1.163 acres.

The Property Location:

Parcel 'A' located at 7275 NW., 8th Street, Miami-Dade County, Florida.

Parcel 'B' located at the Northwest corner of NW., 8th Street and NW. 12th Avenue, Miami-Dade County Florida.

The Property is currently vacant and is remnants of the land acquired by Miami-Dade Aviation Department (MDAD) in order to extend Runway 9 to the West.

The Sponsor's proposed non-aeronautical use of the property is for the release of the land to the Florida Department of Transportation (FDOT) for the construction of an Interchange at State Road (S.R.) 826, the Palmetto Expressway, and State Road (S.R.) 836, the Dolphin Expressway.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection of the Miami-Dade Aviation Department (MDAD) Manager for Development's Office and at the Orlando FAA Airports District Office.

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Documents are available for review at the MDAD Manager of Development Office, Miami International Airport, Miami-Dade County Aviation Department, Mr. Manuel A. Rodriguez, 4200 NW., 36th Street, Building 5A, Suite 400, Miami, Florida 33122, telephone (305) 876–7090 and at the FAA Orlando Airports District Office, Ilia A. Quinones, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822 and telephone number (407) 812–6331. Written comments on the Sponsor's request must be delivered or mailed, 2 copies to Ilia A. Quinones, Program Manager, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, telephone number (407) 812–6331.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Items to address:

- Property location.

Parcel ''A''—NW. 8th Street Site. The metes and bounds description is as follows:

Parcel ''A''—

That portion of Lots 37, 38, and 39, Block 2 of WOOD FARMS SUBDIVISION according to the plat thereof recorded in Plat Book 43 at Page 49 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

COMMENCE at the Southwest corner of said Lot 37; thence run N01°25′51″ W, along the West line of said Lot 37, for a distance of 10.05 feet to a point of intersection with a line parallel to and 10.00 feet North of the South line of said Lot 37; thence run N87°38′21″ E, along a line 10.00 North of the South line of said Lot 37, for a distance of 15.00 feet to a point of intersection with a line parallel to and 15.00 feet East of the West line of said Lot 37 as conveyed to Richard Electric Supply Co. Inc., by County Deed dated January 5, 1983, recorded in Official Records Book 11689 at Page 134 of the Public Records of Miami-Dade County, Florida, said point being also the POINT OF BEGINNING; thence run N01°25′51″ W, along the line 15.00 East and parallel to the West line of said Lot 37, for a distance of 268.97 feet to the point of intersection with the Southwesterly Limited Access Right of Way line of NW 72 Avenue Realignment as shown in the State of Florida Department of Transportation Right-of-Way Map of Section 87502–2672 dated June 23, 1976, recorded in Road Plat Book 112 at Page 50 of the Public Records of Miami-Dade County, Florida; thence run S50°29′10″ E, along the Southwesterly Limited Access Right of Way line, for a distance of 112.49 feet; thence run S44°47′46″ E, along the Southwesterly Limited Access Right of Way line, for a distance of 145.58 feet; thence run S36°44′25″ E, along the Southwesterly Limited Access Right of Way line, for a distance of 103.81 feet to the point of intersection with a line 10.00 feet North and parallel with the South line of Lot 39 as shown in the State of Florida Department of Transportation Right-of-Way Map of Section 87502–2672 dated June 23, 1976, recorded in Road Plat Book 112 at Page 50 of the Public Records of Miami-Dade County, Florida; thence run S87°28′11″ W, along the said line parallel to and 10.00 feet North of the South line of Lot 39, 38 and 37, for a distance of 244.98 to the POINT OF BEGINNING, containing 36,197 square-feet or 0.831 acres more or less.

And

Parcel ''B''—Northwest corner of NW. 8th Street Site. The metes and bounds description is as follows:

Parcel ''B''—

That portion of Lots 42, and 41, Block 2 of WOOD FARMS SUBDIVISION according to the plat thereof recorded in Plat Book 43 at Page 49 of the Public Records of Miami-Dade County, Florida being more particularly described as follows:

BEGINNING at the Northeast corner of said Lot 42; thence run S01°25′46″ E, along the East line of said Lot 42 said line being also the westerly Right-of-Way line of NW 72 Avenue, for a distance of 121.14 feet to the point of intersection with the Limited Access Right of Way line of NW 72 Avenue Realignment as shown in the State of Florida Department of Transportation Right-of-Way Map of Section 87502–2672 dated June 23, 1976, recorded in Road Plat Book 112 at Page 50 of the Public Records of Miami-Dade County, Florida, said point also being a point of curvature of a circular curve concave to the Northwest; thence run Southerly and Southwesterly along the arc of said circular curve concave to the Northwest, having a radius of 25.00 feet, through a central angle of 74°34′34″, for an arc distance of 32.54 feet to a point of reverse curvature with a curve concave to the Southeast, having a radius of 257.00 feet, through a central angle of 5°44′36″, for an arc distance of 25.76 feet to a point of intersection with the Northeasterly Limited Access Right of Way line of NW 72 Avenue Realignment; thence run N36°13′31″ W, along the said Northeasterly Limited Access Right of Way line of NW 72 Avenue Realignment, for a distance of 183.27 feet to a point of intersection with the North line of said Lot 42, thence run N87°28′21″ E, along the North line of said Lot 42, for a distance of 147.41 feet to the point of intersection with the Westerly Right-of-Way line of NW 72 Avenue, said point being also the POINT OF BEGINNING, containing 14,151 square-feet or 0.325 acres more or less.

- Property's existing aeronautical use. The subject property consists of two physically non-contiguous parcels separated by Milam Dairy Road in unincorporated Miami Dade County, Florida. The land is vacant and outside of the airfield operational area of the airport.

- Sponsor's proposed non-aeronautical use. The purpose of the release of this land is to facilitate the transfer of the property to the Florida Department of Transportation (FDOT) for the expansion of the State Road (S.R.) 826/State Road (S.R.) 836 interchange.

FOR FURTHER INFORMATION CONTACT: Ilia A. Quinones, Program Manager, Orlando Airports District Office, 5950

Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 05–10597 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on February 17, 2005, pages 8132–8133.

DATES: Comments must be submitted on or before June 27, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. Title: Malfunction or Defect Report.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0003.

Form(s): FAA Form 8010–4.

Affected Public: A total of 56,045 air carriers and commercial operators.

Abstract: This information allows the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

Estimated Annual Burden Hours: An estimated 8,407 hours annually.

2. Title: Aviation Insurance.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0514.

Forms: NA.

Affected Public: A total of 76 air carriers.

Abstract: This information collected is required for the issuance and administration of aviation insurance policies.

Estimated Annual Burden Hours: An estimated 4,394 hours annually.

3. *Title:* License Requirements for the Operation of a Launch Site.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0644.

forms: NA.

Affected Public: 2 commercial space launch site operators.

Abstract: The information to be collected includes data required for performing launch site location analysis. The launch site license is valid for a period of 5 years. Respondents are licensees authorized to operate sites.

Estimated Annual Burden Hours: An estimated 3,102 hours annually.

4. *Title:* Advisory Circular (AC): Reporting of Laser Illumination of Aircraft.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0698.

Forms: NA.

Affected Public: 400 pilots.

Abstract: This collection covers the reporting of unauthorized illumination of aircraft by lasers.

Estimated Annual burden Hours: An estimated 100 hours annually.

ADDRESSES: Send comment to the Office of Information and Regulatory Affairs, Office of Management and budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued in Washington, DC, on May 20, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–10603 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Daytona Beach International Airport, Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dennis R. McGee, Director of Aviation of the County of Volusia at the following address: 700 Catalina Drive, Suite 300, Daytona Beach, FL 32114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Volusia under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Krystal Hudson, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024, 407–812–6331, ext. 136. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 20, 2005, the FAA determined that the application to impose and use the revenue from a PFC

submitted by County of Volusia was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 3, 2005.

The following is a brief overview of the application.

PFC Application No.: 05–03–C–00–DAB.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March 1, 2010.

Proposed charge expiration date: March 1, 2020.

Total estimated net PFC revenue: $12,302,869.

Brief description of proposed project(s): Bond issuance costs and interest for the terminal facility opened in 1992.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Volusia.

Issued in Orlando, Florida on May 20, 2005.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 05–10601 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–09–C–00–DSM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule land invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before date which is 30 days after date of the publication in the **Federal Register**.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael R. Salamone, Deputy Director Aviation Finance and Administration, Des Moines International Airport, 5800 Fleur Drive, Des Moines, IA 50321.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Des Moines under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Program Manager, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 16, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Des Moines was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 16, 2005.

The following is a brief overview of the application.

Proposed charge effective date: January 1, 2012.

Proposed charge expiration date: August 1, 2015.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $10,577,162.

Brief description of proposed project(s): Airport access control system, construct Runway 5/23 extension, noise compatibility program, extend Taxiway P, runway and taxiway signage, terminal apron reconstruction, Runway 31 Category II centerline lights, south cargo ramp extension, southeast service road relocation, security gate upgrade, rehabilitation of Runway 13L/3R, and land acquisition for Runway 13R/31L.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FASA regional Airports office located at: 901 Locust, Kansas City, MO 64106.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Des Moines International Airport.

Issued in Kansas City, Missouri on May 16, 2005.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 05–10605 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–05–C–00–IAD To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Washington Dulles International Airport, Dulles, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Washington Dulles International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. E. Lynn Hampton; Vice President and Chief Financial Officer of the Metropolitan Washington Airports Authority at the following address: 1 Aviation Circle, Washington, DC 20001–6000.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airports Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terry J. Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166, Telephone: 703–661–1354.

The application maybe reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose and use the revenue from a PFC at Washington Dulles International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 21, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Washington Airports Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 19, 2005.

The following is a brief overview of the application.

Proposed charge effective date: February 1, 2007.

Proposed charge expiration date: May 27, 2017.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $672,867,249.

Brief description of proposed project(s): People Mover System, Tunnels, and Stations.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) required to file FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Washington Airports Authority.

Issued in Dulles, Virginia, on May 19, 2005.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 05–10604 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2005–10038]

Proposed Policy on Bonded Joints and Structures—Technical Issues and Certification Considerations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed policy statement on bonded joints and structures. This notice advises the public, especially manufacturers and repair facilities for aircraft structures that the FAA intends to adopt this policy. This notice is necessary to advise the public of this FAA policy and give all interested persons an opportunity to present their views on it.

DATES: Comments must be received on or before June 27, 2005.

ADDRESSES: Send all comments on the proposed policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.** Comments may be inspected at the Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri, between the hours of 8 and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lester Cheng, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (316) 946–4111; fax: 816–329–4090; e-mail: *lester.cheng@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this proposed policy statement by submitting written data, views, or arguments. Identify the proposed policy statement number, PS-ACE100–2005–10038, on your comments. If you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in the policy because of the comments received.

Comments sent by fax or the Internet must contain ''Comments to proposed policy statement PS–ACE100–2005–10038'' in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in Microsoft Word for Windows. State what specific change you are seeking to the proposed policy memorandum and include justification (for example, reasons or data) for each request.

Copies of the proposed policy statement, PS–ACE100–2005–10038, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. In a few days, the proposed policy statement will also be available on the Internet at the following address *http://www.airweb.faa.gov/policy.*

Issued in Kansas City, Missouri, on May 19, 2005.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10602 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Kootenai County, ID

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Kootenai County, Idaho.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin B. Johnson, Field Operations Engineer, Federal Highway Administration, 3050 Lake Harbor Lane, Suite 126, Boise, Idaho 83703, Telephone: (208) 334–9180; or Mr. David Karsann, Senior Environmental Planner, Idaho Transportation Department, District 1 Office, 600 West Prairie, Coeur d'Alene, ID 83815.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Idaho Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 90 (I–90) in Kootenai County, Idaho. The proposed improvements would involve access and mobility enhancements on I–90 between the Spokane Street west terminus interchange (approximately milepost (MP) 4.3) and State Highway (SH) 41 east terminus interchange (approximately MP 7.6) for a distance of about three (3) miles.

The purpose of this project is to provide transportation system solutions on the I–90 corridor, from the Spokane Street Interchange through the SH 41 Interchange, that will enhance access and cross-freeway mobility, improve traffic operations within the corridor

and provide safe and efficient movement of people, goods and services, while giving full consideration to local roads as primary transportation corridors. This project is needed because congestion and safety concerns are rising within the project corridor and travel times for local and through traffic have increased. These conditions have arisen from increased and projected regional travel demand due to planned community growth, limited local city street connectivity to and across I–90, and mobility limitations at existing interchanges.

Ten alternatives under consideration include (a) taking no action, (b) applying enhanced Transportation Systems and Transportation Demand Management methods on existing transportation systems, (c) Transit, and (d) seven combinations of actions that combine some or all of the following: Interchange modifications at the Spokane Street Interchange, interchange modifications at the SH 41 Interchange, expansion of SH 41 to six lanes; interchange modifications at the Seltice Way Interchange, a new interchange or an I–90 grade separation at Greensferry Road, an I–90 grade separation at Syringa Street, applying access management on Seltice Way, and auxiliary lanes and/or collector distributor roads on I–90 from the Spokane Street Interchange to the SH 41 Interchange.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to provide organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Post Falls. A scoping meeting will be noticed and held in Post Falls. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or ITD at the address provided above.

Authority: 23 U.S.C. 315; 23 CFR 771.123; 49 CFR 1.48.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to the program.)

Issued on: May 4, 2005.

Renee Sigel,

Assistant Division Administrator, Federal Highway Administration, Boise, Idaho.

[FR Doc. 05–10608 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34702]

BNSF Railway Company—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR) has agreed to grant temporary overhead trackage rights to BNSF Railway Company (BNSF) between C.A. Junction, MO (milepost S241.9) and Maxwell, MO (milepost S250.6), a distance of approximately 8.7 miles, connecting with BNSF's existing trackage rights over NSR between W.B. Junction, MO and C.A. Junction.

The transaction is scheduled to be consummated on May 30, 2005, and the temporary trackage rights will expire on or about June 1, 2005. The purpose of the temporary trackage rights is to bridge BNSF's trains while BNSF's main lines are out of service due to programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34702, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *''http://www.stb.dot.gov.''*

Decided: May 24, 2005.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–10649 Filed 5–26–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 23, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 27, 2005 to be assured of consideration.

Departmental Offices

OMB Number: 1505–0186.

Form Numbers: None.

Type of Review: Extension.

Title: Customer Satisfaction Measure of Government Web sites.

Description: The objectives of surveying citizen users of federal agency websites are to: (1) Provide information for improving the quality of and satisfaction with agency websites; (2) ensure continuous assessment and improvement capabilities; (3) benchmark results against other agencies and private companies; (4) determine how different types of changes to the websites will impact future citizen behaviors; and (5) make the agencies part of a quarterly E-Government customer satisfaction benchmark and annual index for all measured Federal Government activities.

Respondents: Individuals or households, Business and other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper: Various.

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 41,667 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–10637 Filed 5–26–05; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 23, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 27, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0922.

Form Numbers: IRS Forms 8329 and 8330.

Type of Review: Extension.

Title: Form 8329: Lender's Information Return for Mortgage Credit Certificates (MCCs); and

Form 8330: Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

Description: Form 8329 is used by lending institutions and Form 8330 is used by state and local government to report on mortgage credit certificates (MCCs) authorized under Internal Revenue Code (IRC) Section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 10,500.

Estimated Burden Hours Respondent/ Recordkeeper:

	Form 8329	Form 8330
Recordkeeping	3 hr., 35 min	4 hr., 32 min.
Learning about the law or the form	1 hr., 5 min	1 hr., 23 min.
Preparing and sending the form to the IRS	1 hr., 12 min	1 hr., 31 min.

Frequency of response: Quarterly (Form 8330); Annually (Form 8329).

Estimated Total Reporting/ Recordkeeping Burden: 73,720 hours.

OMB Number: 1545–1100.

Regulation Project Number: REG–209106–89 NPRM (formerly EE–84–89).

Type of Review: Extension.

Title: Changes with Respect to Prizes and Awards and Employee Achievement Awards.

Description: This regulation requires recipients of prizes and awards to maintain records to determine whether a qualifying designation has been made. The affected public are prize and award recipients who seek to exclude the cost of qualifying prize or award.

Respondents: Individuals and households.

Estimated Number of Respondents: 5,100.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1,275 hours.

OMB Number: 1545–1375.

Regulation Project Number: IA–5–92 Final.

Type of Review: Extension.

Title: Carryover of Passive Activity Losses and Credit and At Risk Losses to Bankruptcy Estates of Individuals.

Description: These regulations provide for a joint election to have the regulations apply to certain bankruptcy cases. In a chapter 7 case, the written consent of the trustee must be obtained. In a chapter 11 case the election must be in the reorganization plan or in a court order.

Respondents: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: Annually.

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1409.

Form Number: IRS Form 8842.

Type of Review: Extension.

Title: Election to Use Different Annualization Periods for Corporate Estimated Tax.

Description: Form 8842 is used by corporations (including S corporations), tax-exempt organizations subject to the unrelated business income tax, and private foundations to annually elect the use of an annualization period in section 6655(e)(2)(c)(i) or (ii) for purpose of figuring the corporation's estimated tax payments under the annualized income installment method.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,700.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—1 hr., 55 min.

Learning about the law or the form—6 min.

Preparing and sending the form to the IRS—8 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 4,335 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–10638 Filed 5–26–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 23, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 27, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1762.

Form Numbers: IRS Form 8050.

Type of Review: Extension.

Title: Direct Deposit of corporate Tax Refund.

Description: This form is used to request a deposit of a tax refund directly into an account at any U.S. bank or other financial institution.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 210,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—1 hr., 25 min.

Learning about the law or the form—6 min.

Preparing, copying, assembling, and sending the form to the IRS—7 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 348,600 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–10639 Filed 5–26–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0251]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the status of a defaulted loan account.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 26, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *nancy.kessinger@mail.va.gov*. Please refer to ''OMB Control No. 2900–0251'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Present Status of Loan, VA Form 26–8778.

OMB Control Number: 2900–0251.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8778 is used to obtain pertinent data from servicers regarding the status of defaulted loans. VA uses the information collected to properly service all defaulted loans.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

Dated: May 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–2707 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0657]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to obtain certification from State approving agency and employees of VA certifying that they do not own any interest in a proprietary profit school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 26, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *nancy.kessinger@mail.va.gov*. Please refer to ''OMB Control No. 2900–0657'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Conflicting Interests Certification for Proprietary Schools, VA form 22–1919.

OMB Control Number: 2900–0657.

Type of Review: Extension of a currently approved collection.

Abstract: VA pays education benefits to veterans and other eligible person pursuing approved programs of education. 38 U.S.C. 3683 prohibits employees of VA and State approving agency enrolled in a proprietary profit school from owning any interest in the school. Veterans or eligible person who is an official authorized to signed certificates of enrollment or verification/certifications of attendance, an owner or an officer are prohibited from receiving educational assistance based on their enrollment in any proprietary school. The information contained on VA Form 22–1919 completed by propriety schools officials certifying that the institution and enrollees do not have any conflict of interest.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 25 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 150.

Dated: May 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–2708 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0270]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0270.'' Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0270'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Financial Counseling Statement, VA Form 26–8844.

OMB Control Number: 2900–0270.

Type of Review: Extension of a currently approved collection.

Abstract: VA personnel and veteran-borrower use VA Form 26–8844 during financial counseling service to record net income, total expenditure, net worth, and to suggest areas where expenses can be reduced or income increased. VA performs financial counseling in some cases to provide veteran-borrowers the maximum assistance possible to retain their home during periods of temporary financial difficulty. VA uses the information collected to help borrowers who are seriously delinquent on guaranteed or insured VA home loans to budget and establish a repayment schedule for the loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 31, 2005, at page 4920.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,750 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: May 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–2709 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0658]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0658.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0658'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Lender Appraisal Processing Program Certification, VA Form 26–0785.

OMB Control Number: 2900–0658.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders complete VA Form 26–0785 to nominate employees for approval as a VA approved Staff Appraisal Reviewer (SAR). Once approved, SAR's will have the authority to review real estate appraisals and to issue notices of values on behalf of VA. VA uses the information colleted to perform oversight of work delegated to lenders responsible for making guaranteed VA loans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2005, at page 7794–7795.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 83 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: May 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–2710 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0469]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0469.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0469'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certificate Showing Residence and Heirs of Deceased Veteran or Beneficiary, VA Form 29–541.

OMB Control Number: 2900–0469.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses the information collected on VA Form 29–541 to establish a claimant's entitlement to Government Life Insurance proceeds in estate cases when formal administration of the estate is not required.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 5, 2005, at page 940.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,039 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,078.

Dated: May 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–2711 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0623]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0623.''

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0623'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, (OM) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of (OM)'s functions, including whether the information will have practical utility; (2) the accuracy of (OM)'s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236.91, Special Notes.

OMB Control Number: 2900–0623.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR Clause 852.236.91 requires bidders to furnish information on previous experience, technical qualifications, financial resources, and facilities available to perform the work. The clause also requires contractors submitting a claim for price adjustment due to severe weather delay to provide climatologically data covering the period of the claim and covering the same period for the ten preceding years. VA uses the data collected to evaluate the bidder's qualification and responsibility, and to evaluate the contractor's claims for contract price adjustment due to weather-related delays.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 5, 2005, at page 939.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 778 hours.

a. Qualifications Data: 758 hours.

b. Weather Data: 20 hours.

Estimated Average Burden Per Respondent:

a. Qualifications Data: 30 min.

b. Weather Data: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,536.

a. Qualifications Data: 1516.

b. Weather Data: 20.

Dated: May 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–2712 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0622]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0622.''

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0622'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, (OM) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of (OM)'s functions, including whether the information will have practical utility; (2) the accuracy of (OM)'s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–89, Buy American Act.

OMB Control Number: 2900–0622.

Type of Review: Extension of a currently approved collection.

Abstract: The Buy American Act requires that only domestic construction material shall be used to perform domestic Federal contracts for construction, with certain exceptions. Despite the allowable exceptions, it is VA policy not to accept foreign construction material. VAAR clause 852.236–89 advises bidders of theses provisions and requires bidders who choose to submit a bid that includes foreign construction material to identify and list the price of such material. VA uses the information to determine whether to accept or not accept a bid that includes foreign construction material.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 5, 2005, at page 941.

Affected Public: Business or other for-profit; Individuals and households; and Not-for-profit institutions.

Estimated Annual Burden: 20 hours.

Estimated Average Burden Per Respondent: 30 min.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40.

Dated: May 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–2713 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0120]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0120.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0120'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Report of Treatment by Attending Physician, VA Form 29–551a.

OMB Control Number: 2900–0120.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–551a is used to collect information from attending physician to determine the claimant's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 5, 2005, at page 940–941.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,069 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,277.

Dated: May 20, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–2714 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 27, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0047.''

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0047'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 26–6807 is used to determine release of liability and substitution of entitlement cases. VA may release original veteran obligors from personal liability arising from the original guaranty of their home loans, or the making of a direct loan, provided the purchasers/assumers meet the creditworthiness requirements. It is also used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan, and to determine homeowners' eligibility for aid under the Homeowners Assistance Program, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 5, 2005, at page 942.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 10,000.

Dated: May 20, 2005.

By direction of the Secretary.

Cindy Stewart,

Program Analyst, Records Management Service.

[FR Doc. E5–2715 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), spina bifida, and birth defects programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 2004. VA is also giving notice of the

maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 2005, which began on October 1, 2004.

DATES: These COLAs are effective December 1, 2004. The headstone or marker allowance rate is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Pamela C. Liverman, Consultant, Compensation and Pension Service (212A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (757) 858–6148, ext. 107.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 2004 under the above computation method was $113. Therefore, effective October 1, 2004, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 2005 is $113.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.7 percent cost-of-living increase in Social Security benefits effective December 1, 2004. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 2004:

Table 1.—Improved Pension

Maximum Annual Rates

(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
- Veteran with no dependents, $10,162
- Veteran with one dependent, $13,309
- For each additional dependent, $1,734

(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
- Veteran with no dependents, $16,955
- Veteran with one dependent, $20,099
- For each additional dependent, $1,734

(3) Veterans who are housebound (38 U.S.C. 1521):
- Veteran with no dependents, $12,419
- Veteran with one dependent, $15,566
- For each additional dependent, $1,734

(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
- Neither veteran in need of aid and attendance or housebound, $13,309
- Either veteran in need of aid and attendance, $20,099
- Both veterans in need of aid and attendance, $26,187
- Either veteran housebound, $15,566
- Both veterans housebound, $17,824
- One veteran housebound and one veteran in need of aid and attendance, $22,353
- For each dependent child, $1,734

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
- Surviving spouse alone, $6,814
- Surviving spouse and one child in his or her custody, $8,921
- For each additional child in his or her custody, $1,734

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
- Surviving spouse alone, $10,893
- Surviving spouse with one child in custody, $12,996
- Surviving Spouse of Spanish-American War veteran alone, $11,596
- Surviving Spouse of Spanish-American War veteran with one child in custody, $13,699
- For each additional child in his or her custody, $1,734

(7) Surviving spouses who are housebound (38 U.S.C. 1541):
- Surviving spouse alone, $8,328
- Surviving spouse and one child in his or her custody, $10,432
- For each additional child in his or her custody, $1,734

(8) Surviving child alone (38 U.S.C. 1542), $1,734

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $2,305 . (38 U.S.C. 1521(g))

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $487 reduced on the basis of the parent's annual income according to the following formula:

TABLE 2

[For each $1 of annual income]

The $487 monthly rate—		
Shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	11,560

No DIC is payable under this table if annual income exceeds $11,560.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $352

reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

[For each $1 of annual income]

The $352 monthly rate—		
Shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	11,560

No DIC is payable under this table if annual income exceeds $11,560.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $330 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

[For each $1 of annual income]

The $330 monthly rate		
Shall be reduced by	Which is more than	But not more than
$.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	15,538

No DIC is payable under this table if combined annual income exceeds $15,538.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $263 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $11,560 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $12,060 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $15,538 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $16,038 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $9,450 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $3,688 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $10,120 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $14,589 (Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Public Law 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 38 U.S.C. 1805(b)(3), spina bifida rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). Effective December 1, 2004, spina bifida monthly rates are as follows:

Level I: $244.
Level II: $844.
Level III: $1,440.

Birth Defects Benefits

Section 401 of Public Law 106–419 authorizes the payment of monetary benefits to, or on behalf of, children of female Vietnam veterans born with certain birth defects. Pursuant to 38 U.S.C. 1815(d), birth defects rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). Effective December 1, 2004, birth defects monthly rates are as follows:

Level I: $111.
Level II: $244.
Level III: $844.
Level IV: $1,440.

Dated: May 19, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. 05–10609 Filed 5–26–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
May 27, 2005

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 418

Medicare and Medicaid Programs: Hospice Conditions of Participation; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–3844–P]

RIN 0938–AH27

Medicare and Medicaid Programs: Hospice Conditions of Participation

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the existing conditions of participation that hospices must meet to participate in the Medicare and Medicaid programs. The proposed requirements focus on the care delivered to patients and their families by hospices and the outcomes of that care. The proposed requirements continue to reflect an interdisciplinary view of patient care and allow hospices flexibility in meeting quality standards. These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of health care furnished through the Medicare and Medicaid programs.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 26, 2005.

ADDRESSES: In commenting, please refer to file code CMS–3844–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. Electronically. You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. By mail. You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3844–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mary Rossi-Coajou, (410) 786–6051. Danielle Shearer, (410) 786–6617. Steve Miller, (410) 786–6656.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–3844–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Introduction

As the single largest payer for health care services in the United States, the Federal Government assumes a critical responsibility for the delivery and quality of care furnished under its programs. Historically, we have adopted a quality assurance approach that has been directed toward identifying health care providers that furnish poor quality care or fail to meet minimum Federal standards. These problems would either be corrected or would lead to the exclusion of the provider from participation in the Medicare or Medicaid programs. However, we have found that this problem-focused approach has inherent limits. Ensuring quality through the enforcement of prescriptive health and safety standards, rather than improving the quality of care for all patients, has resulted in our expending much of our resources on dealing with marginal providers, rather than on stimulating broad-based improvements in quality of care.

Eliciting quality health care for Federal beneficiaries from CMS-certified providers and suppliers requires taking advantage of continuing advances in the health care delivery field. As a result, we are revising the Medicare hospice requirements, which are also used by Medicaid, to focus on a patient-centered, outcome-oriented process that promotes patient care foremost, rather than penalizing unproductive providers. We have developed a set of core requirements for hospice services that encompass the following: Patient rights, comprehensive assessment, and patient care planning and coordination by a hospice interdisciplinary group (IDG). Overarching these requirements is a quality assessment and performance improvement program that builds on the philosophy that a provider's own quality management system is key to improved patient care performance. The objective is to achieve a balanced regulatory approach by ensuring that a hospice furnishes health care that meets essential health and quality standards, while ensuring that it monitors and improves its own performance.

To achieve this objective, we are working to revise not only the hospice requirements but the requirements for several other major health care provider types, such as hospitals, home health agencies, and end-stage renal disease facilities, through separate rules. All of the revised requirements are directed towards improving patient outcomes of care and satisfaction.

II. Background

A. The Medicare Hospice Benefit

Hospice care is an approach to caring for the terminally ill individual that provides palliative care rather than traditional medical care and curative treatment. Palliative care is treatment for the relief of pain and other

uncomfortable symptoms through the appropriate coordination of all aspects of care needed to maximize personal comfort and relieve distress. Hospice care allows the patient to remain at home as long as possible by providing support to the patient and family, and keeping the patient as comfortable as possible while maintaining his or her dignity and quality of life. A hospice uses an interdisciplinary approach to deliver medical, social, physical, emotional, and spiritual services through the use of a broad spectrum of caregivers.

Section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248, added section 1861(dd) to the Social Security Act (the Act) to provide coverage for hospice care to terminally ill Medicare beneficiaries who elect to receive care from a Medicare-participating hospice.

Under the authority of section 1861(dd) of the Act, the Secretary has established the Conditions of Participation (CoPs) that a hospice must meet to participate in Medicare and/or Medicaid, and these are currently set forth at 42 CFR part 418. The CoPs apply to a hospice as an entity as well as to the services furnished to each individual under hospice care. Under section 1861(dd) of the Act, the Secretary is responsible for ensuring that the CoPs, and their enforcement, are adequate to protect the health and safety of individuals under hospice care and to promote the effective and efficient use of Medicare funds. To implement this requirement, State survey agencies conduct surveys of hospices to assess their compliance with the CoPs.

B. Why Revise the Conditions of Participation?

The hospice CoPs were originally promulgated on December 16, 1983 (48 FR 56008) and were amended on December 11, 1990 (55 FR 50831) largely to implement provisions of section 6005(b) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239). However, many of the current CoPs have remained unchanged since their inception.

We are proposing changes to the current CoPs based on four main considerations. First, we considered the suggestions that emerged from the Secretary's Advisory Committee on Regulatory Reform. In an effort to make regulations more predictable and responsive to relevant stakeholders, the Committee heard public testimony on a variety of hospice related topics and developed recommendations to address key issues that were highlighted. The two largest changes that resulted from the Committee's recommendations are the clarification of the relationship between nursing facilities and hospices at proposed § 418.112, and the changes to the nursing services standard at proposed § 418.110(b).

Our second consideration was the Balanced Budget Act of 1997 (Pub. L. 105–33) because it made changes to the hospice statute that need to be incorporated into the CoPs.

Our third consideration was prompted by sections 408 and 946 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). Section 408 amended the Social Security Act to permit a nurse practitioner to be deemed a patient's attending physician when the patient elects hospice care. Section 946 amended section 1861(dd), Hospice Care: Hospice Program, of the Act to permit a hospice to enter into an arrangement with another hospice to provide core hospice services, or to provide highly specialized services of a registered professional nurse, in certain circumstances.

Finally, this revision is part of a larger effort to bring about improvements in the quality of care furnished to Medicare and Medicaid beneficiaries through an outcome-oriented approach to quality of care responsibilities. The existing hospice CoPs do not contain patient-centered, outcome-oriented standards, nor do they provide for the operation of a quality assessment and performance improvement program.

Historically, we have established requirements for participation in the Medicare program that address the structure and process of health care. These early requirements are the result of professional consensus. Enforcing structure and process requirements by identifying deficient providers has not been adequate to meet the growing challenges associated with the changing hospice care environment. For example, rather than focusing on the relationship between the needs of patients and the staff available in an inpatient facility, the current regulations require that a registered nurse be present on every shift. Hospices often contract with local nursing facilities to provide inpatient respite care, and these facilities are only required to have a registered nurse on duty for a single eight hour shift each day. A hospice would have to supplement the nursing facility's staff with its own, at a significant cost to the hospice, even if the needs and acuity of the patient do not require a registered nurse. A hospice that did not supplement the facility's staff could be cited for not meeting the requirements, even though the requirements had no relevance to the needs of the patient. Thus, revisions to the hospice CoPs are essential.

C. Transforming the Hospice Conditions of Participation

Before developing these proposed CoPs for hospices, we received advice and suggestions from the hospice industry, professional associations, practitioner communities, consumer advocates, and State and other governmental agencies with an interest in, or responsibility for, hospice regulation and oversight. Based on these suggestions, we have developed the following principles:

- Focus on the continuous, integrated health care process that a patient/family experiences across all aspects of hospice care, and on activities that center around patient assessment, care planning, service delivery, and quality assessment and performance improvement.
- Use a patient-centered, interdisciplinary approach that recognizes the contributions of various skilled professionals and other support personnel and their interaction with each other to meet the patient's needs.
- Incorporate an outcome-oriented quality assessment and performance improvement program.
- Facilitate flexibility in how a hospice meets performance expectations.
- Require that patient rights are ensured.
- Use performance measurement systems to evaluate and improve care.

Based on these principles, we are proposing to set forth four core conditions of participation: Patient Rights, Patient/Family Assessment, Interdisciplinary Care Planning and Coordination of Services, and Quality Assessment and Performance Improvement.

- The Patient Rights CoP emphasizes a hospice's responsibility to respect and promote the rights of each hospice patient.
- The comprehensive Patient/Family Assessment CoP reflects the critical nature of a comprehensive assessment in determining appropriate treatments and accomplishing desired health outcomes.
- The Care Planning and Coordination of Services CoP incorporates the interdisciplinary team approach to providing hospice care.
- The Quality Assessment and Performance Improvement CoP charges each hospice with the responsibility for carrying out a performance effort to effect continuing improvement in the

quality of care it furnishes to its patients and their families.

The last three requirements establish a cycle of individual care and hospice-wide performance improvement. First, the patient's needs are comprehensively assessed and outcome measure data are collected. Second, the interdisciplinary group, in consultation with the patient's attending physician, establishes a plan of care to address those needs. Third, the plan of care is implemented and the results of the care are evaluated through updates of the comprehensive assessment and plan of care. Fourth, the outcome measure data collected during the initial and updated comprehensive assessments are analyzed to identify practices that lead to positive outcomes as well as opportunities for improvement. Finally, the hospice uses the results of such analyses to implement performance improvement activities. These activities will influence the establishment of plans of care and their implementation, thus creating a continuous cycle of individual care and an ongoing effort to improve the hospice's performance related to identified outcomes of care for all patients.

This cycle of care adapts to changing standards of practice while addressing issues that surveyors have identified. Below is a list of the most cited deficiencies found by surveyors (year ending September 3, 2002):

1. Plan of care was not complete.
2. No written plan was established.
3. Plan was not reviewed at specific intervals.
4. Plan did not include an assessment of needs.
5. Plan was not established before providing care.
6. RN supervisory visits were not made for home health aide services.
7. No plan of care was included for bereavement services.
8. Hospice did not conduct a self-assessment of quality and care provided.
9. Clinical record was not maintained for every patient.
10. Interdisciplinary group did not review and update the plan of care for each patient.

We note that 8 of the 10 top deficiencies are related to plan of care, assessment, and quality assurance. Based on industry comments and our own surveys, we believe that the current plan of care condition contained in § 418.58 must be strengthened. We did this by creating a separate condition for the assessment of individual needs and for the time frames related to that assessment. We also revised the quality assurance requirement and strengthened the plan of care requirement.

These requirements would focus provider and surveyor efforts on the actual care delivered to the patient, the performance of the hospice as an organization, and the impact of the medical, physical, social, emotional, and spiritual care delivered to the patient.

We are proposing to retain some of the current process-oriented requirements when they are likely to produce desirable outcomes and/or prevent harmful outcomes. These proposed CoPs invest in hospices the responsibility for improving patient care performance, rather than relying on an externally based approach where prescriptive requirements are enforced through the punitive aspects of the survey process.

This change signals an opportunity for CMS, hospices, and States to join in a partnership for improvement. When implemented, hospice programming will reflect a patient-centered, outcome-oriented approach that will likely alter the manner in which CMS and States manage the survey process. We believe that this approach will provide opportunities for improvement in patient care that have been lacking in the past. The addition of a strong quality assessment and performance improvement requirement will stimulate the hospice to continuously monitor its performance and find opportunities for improvement.

D. Development of Outcome-Based Performance Measures for Hospices

[If you choose to comment on issues in this section, please include the caption ''OUTCOME-BASED PERFORMANCE MEASURES'' at the beginning of your comments.]

We are proposing to require that hospices implement an outcome-based internal performance improvement program that can be used to measure individual patient outcomes. The information a hospice gleans from its own data analysis will serve as a baseline for hospice quality improvement. Measures quantify quality and are tools for the hospice to use in assessing and improving patient care, outcomes, and satisfaction. An outcome based performance program can help hospices improve the effectiveness and efficiency of their services, improve the outcomes of care they provide, and increase patient satisfaction with their services.

Hospice outcome measures, data elements, tools, and instructions for using them have already been developed by the industry. A Task Force initiative was sponsored and convened by the National Hospice Work Group (NHWG) and the National Hospice and Palliative Care Organization (NHPCO) in 1999. We participated in the development of the measures and provided technical assistance for pilot testing of the measures. The Task Force was invited to present the results of the measurement development work and results of the pilot studies to us in November 2000.

The work of the Task Force resulted in four measures for the outcome domains of self-determination, comfort, safety, and effective grieving. The hospice industry rapidly moved to include these four measures in the data set that they encourage member hospices to use and report. The data elements and instructions for using the measures are publicly available on the NHPCO Web site at *http://www.nhpco.org.*

These outcome-based measures are part of a national reporting process created by the hospice industry. If a hospice chooses to participate in the NHCPO process, it submits its data to the NHPCO (or its contractor). Reports are then generated for a hospice to compare its performance with other hospices. The hospice may also choose to send additional information for the NHPCO reporting process in the areas of pertinent utilization data, appropriateness and effectiveness of services, and patient/family satisfaction. All hospices that participate in the NHPCO reporting process must comply with regulations mandated by the Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104–191, ''HIPAA''). Regulations implementing HIPAA were published on December 28, 2000 (65 FR 82462) and were amended on August 14, 2002 (67 FR 53182).

We are not proposing to require that hospices participate in the NHPCO process described above, but hospices may choose to use some of the measures the NHPCO is already using as part of its comprehensive assessment of the patient, and as part of the organization's quality assessment and performance improvement program. Hospices may also develop their own data elements and measurement processes. Participating in the NHPCO outcome measurement and reporting process would assist hospices in meeting the requirements of proposed § 418.54(e). At this time, we are neither proposing that hospices use any particular measures of outcomes, nor that they report data to us. However, we may consider doing so in the future.

We invite comments from the public on this aspect of the proposed rule.

III. Provisions of the Proposed Regulations

A. Overview

Under our proposal, the hospice conditions of participation would continue to be set forth in regulations under 42 CFR part 418. However, since many of the existing requirements in part 418 would be revised, consolidated with other requirements, or eliminated, we are proposing changes to the existing organizational scheme. A significant change would be to group all CoPs directly related to patient care and place them together in a separate subpart. CoPs concerning hospice organization and administration would be contained in another subpart. We believe that this proposed organization better reflects a patient/family-centered orientation and helps illustrate that patient assessment, care planning, and quality assessment and improvement efforts are central to the delivery of high quality care.

B. Subpart A, General Provisions

The revised conditions would begin with existing § 418.2 that specifies the statutory authority and scope of the part for the ensuing regulations. Section 418.1 would remain unchanged.

1. Scope of the Part (Proposed § 418.2)

Section 418.2 would be revised to reflect the reorganization of the part and to include an introductory statement describing the purpose of the part.

2. Definitions (Proposed § 418.3)

Existing § 418.3 sets forth definitions for terms used in the hospice CoPs. This section is being revised in order to provide further clarification. We are proposing to move existing definitions of ''physician'' and ''social worker'' to proposed § 418.114, personnel requirements. We believe these definitions better fit in this new condition. We propose to include the following definitions:

- Attending physician (revised)
- Bereavement counseling (revised)
- Cap Period (same)
- Clinical note (new)
- Drug restraint (new)
- Employee (revised)
- Hospice (revised)
- Hospice care (new)
- Licensed professional (new)
- Palliative care (new)
- Physical restraint (new)
- Progress note (new)
- Representative (revised)
- Restraint (new)
- Satellite location (new)
- Seclusion (new)
- Terminally ill (revised)

These definitions would be revised to read as follows:

Attending physician means a—

(a)(1) Doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs that function or action; or (2) Nurse practitioner who meets the training, education and experience requirements as the Secretary may prescribe; and

(b) Is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

Here after, except as indicated, the term ''attending physician'' includes nurse practitioners.

We modified this definition to address changes made to the Act by Congress in section 408 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) (''MMA''). Nurse practitioners are often the primary medical health care professionals for some patients, particularly those residing in rural areas. For example, a nurse practitioner that works in conjunction with a doctor may be the health care professional a patient sees most often. The patient would develop a relationship with the nurse practitioner, and would like the nurse practitioner to continue to be involved in his or her care once he or she elects the hospice benefit. Under the current regulations, this is not allowed. Under the proposed regulations, we would permit a nurse practitioner to continue serving his or her patient as that patient's attending physician once that patient elects to receive hospice care. We believe that this would ensure the continuity of care and improve the quality of care because the health care professional most familiar with the patient, his or her conditions, and his or her personal situation would be involved in developing the plan of care and in making other important decisions.

Within the provisions of section 408 of the MMA nurse practitioners are prohibited from certifying or recertifying a patient's terminal illness. CMS will publish additional information regarding section 408 in a forthcoming **Federal Register** document.

Bereavement counseling means emotional, psychosocial, and spiritual support and services provided after the death of the patient to assist with issues related to grief, loss, and adjusting.

Cap period means the 12-month period ending October 31 used in the application of the cap on overall hospice reimbursement as specified in § 418.309.

Clinical note means a notation of a contact with the patient that is written and dated by any person providing services, and that describes signs and symptoms, treatments and medications administered, including the patient's reaction and/or response, and any changes in physical or emotional condition.

Drug restraint means a medication used to control behavior or to restrict the patient's freedom of movement which is not a standard treatment for a patient's medical or psychiatric condition.

Employee means a person who works for the hospice and for whom the hospice is required to issue a W–2 form on his or her behalf, or if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice or is a volunteer under the jurisdiction of the hospice.

Hospice means a public agency or private organization or subdivision of either of these that is primarily engaged in providing hospice care as defined in this section.

Hospice care means a comprehensive set of services described in 1861(dd)(1) of the Act, identified and coordinated by an interdisciplinary team to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and/or family members, as delineated in a specific patient plan of care.

Licensed professional means a licensed person sanctioned by the State in which services are delivered, furnishing services such as skilled nursing care, physical therapy, speech-language pathology, occupational therapy, and medical social services.

Palliative care means patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice.

Physical restraint means any manual method or physical or mechanical device, material, or equipment attached to the patient's body that he or she cannot easily remove that restricts freedom of movement or normal access to one's body.

Progress note means a written notation, dated and signed by any person providing services, that summarizes facts about the care furnished and the patient's response during a given period of time.

Representative means an individual who has the authority under State law (whether by statute or pursuant to an appointment by the courts of the State) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill patient who is mentally or physically incapacitated. This may include a legal guardian.

Restraint means either a physical restraint or a drug used as a restraint.

Satellite location means a Medicare-approved location from which the hospice provides hospice care and services within a portion of the total geographic area served by the hospice provider issued the provider agreement number. The satellite location is part of the hospice and shares administration, supervision, and services in a manner that renders it unnecessary for the satellite location to independently meet the conditions of participation as a hospice.

We are proposing to add this definition to recognize long-standing Medicare survey and certification policies, which allow for the operation of multiple locations by a single hospice provider. We are proposing that a hospice satellite location be approved by CMS before it begins to furnish service to patients. In the past, some hospices were found to be furnishing services from locations that had not been shown to be in compliance with applicable regulations. We envision the approval process to be consistent with determining that patients receive safe services from the satellite location in question. As is done for other appropriate providers and suppliers, we are accepting comment on applying the Medicare Appeals Procedures that affect participation in the Medicare program (42 CFR 498.3). If a hospice, including any or all satellite locations, is accredited by an accrediting organization such as JCAHO or CHAP, the hospice and each satellite location must still receive Medicare approval.

Seclusion means the confinement of a person in a room or an area where a person is isolated and physically prevented from leaving.

Terminally ill means that a patient has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

C. Subpart B, Eligibility, Election and Duration of Benefits

Subpart B concerns eligibility, election, and duration of hospice benefits. We are not proposing changes to this subpart at this time.

D. Subpart C, Conditions of Participation—Patient Care

1. Patient's Rights, Condition of Participation (Proposed § 418.52)

[If you choose to comment on issues in this section, please include the caption ''PATIENTS RIGHTS'' at the beginning of your comments.]

This section would replace the current condition of participation, Informed consent, laid out at § 418.62. This condition would set forth certain rights to which hospice patients would be entitled, and would require that hospices inform each patient of these rights and that hospice personnel ensure and support these rights. Among these rights would be the following, laid out at proposed § 418.52: Being informed in advance regarding the care to be provided; having an opportunity to participate in care planning; voicing grievances; being assured of confidentiality of records; having personal property respected; being informed whether services are covered or not covered, and having information provided in writing. We are proposing to specify that the patient must also be informed about factors that affect palliation and comfort. We believe that these revisions would act as an additional safeguard of patient health and safety. Open communication between hospice staff and the patient, and patient access to palliative information is vital to enhancing the patient's participation in his or her coordinated care planning. All hospices must also comply with the Privacy Rule published in the **Federal Register** on December 28, 2000 (65 FR 82461) as amended on August 14, 2002 (67 FR 53182) and contained in 45 CFR parts 160 and 164.

We are specifically soliciting public comment on this proposed condition of participation.

2. The Cycle of Care: Assessment, Planning, and Delivery (Proposed § 418.54 Through § 418.62)

The patient care assessment, planning, and palliative care process represented by the next four CoPs (§ 418.54 through § 418.62) can be seen as a cycle. Through the use of a comprehensive assessment, accurate and timely patient information is made available for use in the patient care process. The palliative care process consists of all hospice care and services furnished to the patient and family. The patient palliative care process results in an effect on the patient's condition, whether it is positive or negative. The assessment of the effectiveness of palliative care then results in subsequent care decisions, and the cycle begins anew. Through this cycle, accurate patient and family information obtained from each comprehensive assessment should yield effective and appropriate palliative care decisions, thus generating a positive effect on patient care and desired outcomes.

Condition of Participation: Comprehensive Assessment of the Patient (Proposed § 418.54)

The proposed comprehensive assessment requirement reflects our view that a patient-centered, interdisciplinary, and systematic patient assessment is essential to improving patient quality of care and patient outcomes.

In hospice care, the comprehensive assessment of the patient contributes to quality of care improvements in closely linked stages. First, the information generated from an interdisciplinary comprehensive assessment is a vital tool for developing a hospice patient's plan of care that will guide decisions on how best to determine the individual care and support needs of the patient. Second, based on updates of the comprehensive assessment, a hospice is able to track the patient's progress towards achieving the desired care outcomes, and where this does not occur, make appropriate changes to the patient's plan of care. Finally, the hospice is able to evaluate the results of its care decisions, thus yielding information to help form the hospice's future care planning process. We believe this approach reflects contemporary standard practice for many hospices, and we are proposing to revise the CoPs to support this outcome-oriented approach.

The centerpiece of this outcome-oriented approach is that each patient receives a patient-specific comprehensive assessment that identifies the patient's need for medical, nursing, psychosocial, emotional and spiritual care. The care needs identified in the assessment would include, but not be limited to, those necessary for palliation and management of the terminal illness and related medical conditions. The comprehensive assessment would be completed by the interdisciplinary group in consultation with the individual's attending physician to ensure that each member of the interdisciplinary group provided input within the scope of that individual's practice. We believe that the patient-specific comprehensive assessment requirement we are proposing is already recognized and practiced by the hospice industry in general.

The existing CoPs contain few requirements that address the need for patient assessment; therefore, we are emphasizing the importance of the comprehensive assessment by establishing it as a separate CoP. In hospice surveys nationwide, we have identified a pattern of healthcare related deficiencies that indicate that the current assessment requirements are not sufficient. The fourth most frequently cited deficiency is that the plan of care did not include an assessment of the patient's needs. The frequency with which this area is cited indicates that there are a significant number of hospices that are not doing enough to properly assess their patients.

The expanded assessment condition would guide these deficient hospices in thoroughly assessing their patients by identifying the general areas that should be included in each assessment and by identifying time frames for the completion of assessments. We believe that this proposed CoP would enable hospices to specifically identify patient care needs. Once a hospice has completed a timely and thorough assessment of the patient, it can develop an accurate plan of care that reflects the needs identified during the assessment. The accuracy and timeliness of the plan of care may lead to an improvement in the quality of the hospice experience for the patient and his or her family.

In addition, we believe that the broad assessment outline we are proposing will encourage hospices to exercise flexibility in determining how best to achieve positive outcomes. We believe that this approach is consistent with currently accepted practices in hospices.

In § 418.54(a), Initial assessment, we are proposing that a registered nurse make the initial assessment visit to determine the patient's immediate care and support needs within 24 hours after the hospice receives a physician's admission order for care (unless another date is specified by the physician). We realize that some hospices meet with patients and their families, at their request, before the actual admission for care orders are received, and this regulation would not prevent this practice. However, meeting with a patient and his or her family before the patient's physician orders hospice care would not satisfy the initial assessment requirement.

In § 418.54(b), Time frame for completion of the comprehensive assessment, we are proposing that the hospice interdisciplinary group, in consultation with the hospice medical director or physician designee and/or the individual's attending physician, complete the comprehensive assessment in a timely manner consistent with the patient's immediate needs, but no later than 4 calendar days after the patient elects the hospice benefit. We believe that most hospices already complete the assessment within this time frame and, due to the decreased length of stay, as explained in the discussion of § 418.54(d), Update of the comprehensive assessment, and the potential severity of the patient's condition, we believe it is essential to ensure that patients are assessed in a timely manner.

Section § 418.54(c), Content of the comprehensive assessment, would describe the requirements for the content of the comprehensive assessment that we believe are critical to quality hospice care. These content requirements are at the core of hospice care and are needed to evaluate the patient's need for physical, social, emotional, medical, and spiritual care.

Under proposed § 418.54(c)(3)(ii), Drug therapy, the patient's comprehensive assessment would have to'include a review of the patient's current medication. The review and accompanying documentation would include identification of the following items:

- Ineffective drug therapy;
- Unwanted side and toxic effects; and
- Drug interactions.

This review must be repeated as necessary to ensure that the patient continues to receive drug therapy that is effective and appropriate for his or her needs. A review of a patient's drugs would be included in the initial assessment and in the development of the plan of care. This review could occur at any time, but specifically when a patient is prescribed or begins to take any new drug and/or when use of a drug is discontinued.

In § 418.54(d), Update of the comprehensive assessment, we are proposing that the comprehensive assessment be updated by the interdisciplinary group as frequently as the patient's condition requires, but no less frequently than every 14 days. We believe that these frequent reviews are necessary and predictive of quality outcomes for two reasons:

(1) In the terminal stages of care, patient status needs, circumstances, and family expectations can change greatly, affecting the type and frequency of services that should be furnished. Reassessments assist the hospice in developing a more responsive care plan. The interdisciplinary group would use assessment information to guide necessary reviews and/or changes to the patient's plan of care.

(2) We are proposing that a hospice medical director or physician designee be required to recertify a patient for hospice care at specific intervals as stated in § 418.21. We believe recertification, which occurs at the end of the initial and subsequent 90-day benefit periods (and at the end of the remaining benefit periods as described in § 418.21), serves as a logical point for updating an assessment in addition to the minimum 14 days and when the patient's condition changes.

We believe that to ensure quality and timely care for our hospice beneficiaries, timely completion of the initial assessment requirement and the comprehensive assessment update requirement is necessary. In 2001 the average length of enrollment in hospice care was 51 days (2002 Nov. Medicare National Summary for HHA, Hospice, SNF, and outpatient CY 1999–2001, *http://www.cms.hhs.gov/statistics/feeforservice/National Summary.pdf).* According to research by the NHPCO, in 2000 the average length of enrollment in hospice care was 48 days (2000 NHPCO National Data Set Summary Report, 2001 Nov.). There has been some concern regarding short lengths of stay. Hospices have been admitting patients late in their terminal illness and those patients need extensive hospice services and resources initially, and right before death. In order to ensure that patients receive the necessary services and thus begin to benefit from hospice care at the earliest time possible, we believe that it is important that the comprehensive patient assessment be completed within the time frame that we have proposed. A delay in completing the initial comprehensive assessment and the updated assessments is ultimately not as beneficial to the patient and family as if the patient had entered hospice care and received timely assessments to determine the proper care to be provided.

These requirements, though process-oriented in part, are predictive of good patient care and safety. Our rationale for requiring the completion of the initial comprehensive assessment is that a new patient being referred to a hospice for initiation of services is at a point of immediate need and often in crisis. Likewise, maintaining an ineffective plan of care could jeopardize patient health and safety. Regular assessment updates would minimize this possibility.

We believe that the comprehensive assessment requirements pose little or no burden for hospices because it is a current standard of practice to

comprehensively assess hospice patients. However, we recognize that the proposed 4-day timeframe for completing the initial comprehensive assessment as proposed in § 418.54(b) and 14-day timeframe for updating the comprehensive assessment as proposed in § 418.54(d) may set higher performance expectations for some hospices then the self-imposed standards they currently utilize. We believe that if a hospice recognizes that it is not capable of furnishing services within these timeframes, new patients should not be accepted for care.

We welcome public comments on the review of our proposed timeframes for the initial comprehensive assessment and updated comprehensive assessment. We believe the timeframes are reasonable and consistent with current hospice practice.

[If you choose to comment on issues in this section, please include the caption ''ASSESSMENT TIME FRAMES'' at the beginning of your comments.]

Under the proposed § 418.54(e), Patient outcome measures, we are proposing that a patient's comprehensive assessment include measurement and documentation of aspects of care that are essential outcomes of optimal hospice care. Documentation is carried out in the same way for all patients through what we refer to as data elements. The hospice may develop its own data elements or use existing, externally developed data elements. However, some of the data elements should be related to the domains of self-determination, comfort, safety, and effective grieving related to bereavement services. If a hospice chooses to collect information for the data elements developed by the NHPCO, it may also choose to submit this information to the NHCPO. However, submission must be in accordance with the HIPAA privacy rule (45 CFR Parts 160 and 164). The hospice may also choose to send additional information for the NHPCO reporting process in the areas of pertinent utilization data, appropriateness and effectiveness of services, and patient/family satisfaction.

The data elements used by the hospice must be an integral part of both the initial comprehensive and updated assessments. The application of these data elements to the identified domains must be documented in a systematic and retrievable way for each patient, as the outcome measurements will be used in patient care planning and coordinating services. Measurements will also be used (in the aggregate) for the hospice quality assessment and performance improvement program.

We want to emphasize that we are not proposing that hospices use any specific data elements to measure domain outcomes. We are simply proposing that hospices collect the data necessary to evaluate the quality of care they are providing and use this information in a systematic and retrievable way. Hospices may develop their own data elements related to the aspects of care related to hospice and palliation, such as self-determination, comfort, safety, and effective grieving, or may use the data elements related to the seven outcome measures in the NHPCO data set *(http://www.nhpco.org)*.

Currently, there is insufficient evidence for a valid and reliable common set of measures (that is, data elements) for use in hospice care. We are aware that the industry is studying this area. We also know that there are many measures that are currently used to help gauge the processes of care for hospice patients and to make adjustments to care on their basis. For example, there are multiple scales for use in pain management, anxiety, and depression, and there are several quality-of-life scales appearing in the relevant literature *(http://www.nhpco.org* and *http://www.chcr.brown.edu/pcoc/toolkit.htm)*. Some measurable outcomes can be captured in single items while others require multiple items to capture the full range of measurement issues.

We welcome comments on our ''outcome measures'' approach to this proposed regulation. We are particularly interested in comments as to whether this approach is necessary in assessment, care planning, service delivery, and most importantly, to the hospice's quality assessment and performance improvement program.

[If you choose to comment on issues in this section, please include the caption ''OUTCOME MEASURES'' at the beginning of your comments.]

Condition of Participation: Interdisciplinary Group Care Planning and Coordination of Services (Proposed § 418.56)

[If you choose to comment on issues in this section, please include the caption ''PLAN OF CARE'' or ''COORDINATION OF SERVICES'' where appropriate, at the beginning of your comments.]

The existing condition of participation concerning the plan of care is set forth at § 418.58. We are proposing to revise the contents of this section and place them in a new condition, ''Interdisciplinary group care planning and coordination of services'' (proposed § 418.56). The proposed condition would contain five standards that reflect the interdisciplinary approach to hospice care delivery.

As proposed, each patient and family would have a written plan of care developed by the hospice interdisciplinary group in consultation with the patient's attending physician that specifies the hospice care and services necessary to meet the patient/family-specific needs identified in the comprehensive and updated assessments. All hospice services furnished to patients and their families must follow this written plan of care.

Under proposed § 418.56(a), Approach to service delivery, we are proposing that the hospice designate an interdisciplinary group or groups composed of individuals who work together to meet the physical, medical, social, emotional, and spiritual needs of the hospice patients and families facing terminal illness and bereavement. We believe that the role of the interdisciplinary group is paramount in directing and monitoring the patient care and is one of the factors that makes the hospice benefit unique. The hospice would designate a qualified health care professional who is a member of the interdisciplinary group to provide program coordination, ensure the continuous assessment of each patient's and family's needs, and ensure the implementation and revision of the plan of care.

The proposed standard at § 418.56(b), Plan of care, is the same as the existing standard at § 418.58(a), with one addition. We are including a reference to the patient's family when establishing the plan of care. We would require that all hospice services furnished to patients and their families follow a written plan of care established by the hospice interdisciplinary group in collaboration with the attending physician. Family plays an important role in the care of a hospice patient, and this change reflects that role.

Under the proposed standard at § 418.56(c), Content of the plan of care, we would require that each patient's plan of care reflect interventions for problems identified in the comprehensive and updated assessments. This requirement ensures that care and services are appropriate to the level of each patient's and family's specific needs. The plan of care must include the following:

- Interventions to facilitate the management of pain and symptoms;
- A detailed statement of the scope and frequency of services required to meet the patient's and family's specific needs;

• Measurable outcomes anticipated from implementing and coordinating the plan of care;
• Drugs and treatment necessary to meet the needs of the patient;
• Medical supplies and appliances required to meet the needs of the patient; and
• The interdisciplinary group's documentation in the clinical record indicating the patient's and family's understanding, involvement, and agreement with the plan.

As we noted in the description of the previous standard, we are proposing to add a requirement that the plan address the patient's and family's expectations, understanding, agreement, and ability to participate in the care as the patient and family desire. Since family members need to understand the importance of their role in care of the hospice patient, their input and agreement regarding care is essential in developing a productive relationship with the hospice. We would expect a hospice to document the patient's and family's understanding of and agreement to the plan of care in accordance with its own policies. This could include an attestation signed by the patient and family, a note in the clinical record, and/or another form of documentation decided upon by the hospice governing body.

Proposed standard § 418.56(d), Review of the plan of care, would require that a revised plan of care include current information from the patient's updated comprehensive assessment and information concerning the patient's progress toward achieving outcomes specified in the plan of care. The plan of care must be reviewed at intervals specified in the plan but no less frequently than every 14 calendar days. We believe that it is essential to include the requirement that actual care provided also be changed as needed, thus establishing the essential linkage between assessment information, evaluation of treatment results, and plan of care modification.

We also propose to require that the hospice take steps to involve the patient's attending physician in the review of the patient's plan of care. The attending physician often has had a lengthy relationship with the patient; and his or her input into the review of the plan of care can be invaluable. We do not have the authority in the Conditions of Participation governing hospices to require that an attending physician, an individual who is not an employee of the hospice and thus not governed by these hospice regulations, participate in this process. However, we can and are proposing that the hospice collaborate with the patient's attending physician to the extent possible when reviewing the plan of care. We believe that requiring hospices to involve interested attending physicians will benefit patients by helping to ensure that the care described in the plan of care reflects the needs and desires of patients and their families.

We are proposing to add a new standard, Coordination of services, at § 418.56(e). This standard would require that the hospice maintain a system of communication and integration to enable the interdisciplinary group to ensure the overall provision of care and the efficient implementation of the day-to-day policies. These new standards would also make it easier for the hospice to ensure that the care and services are provided in accordance with the plan of care, and that all care and services provided are based on the comprehensive and updated assessments of the patient's and family's needs. An effective communication system would also enable the hospice to ensure ongoing liaison of all disciplines providing care and services in the home, outpatient, and inpatient settings, notwithstanding the manner in which the care and services are furnished.

We believe that this standard is appropriate for two reasons. First, a hospice patient typically encounters many services delivered at different times by a variety of individuals with different skills. An efficient method of communication and integration of observations among members of the interdisciplinary group and others providing care is essential to meet and respond to the patient's and family's needs in a timely manner. Second, effective communication and coordination of services will assist a hospice in avoiding a duplication of effort or a furnishing of conflicting services.

We recognize the value of an interdisciplinary approach to the delivery of hospice services. This approach to care reflects actual industry practice, and as a result, we believe the proposed requirement is in step with the hospice industry.

We are specifically soliciting public comment on the proposed requirements for the content of the plan of care, the time frames for review of the plan of care, and the new coordination of services standard.

Condition of Participation: Quality Assessment and Performance Improvement (Proposed § 418.58)

[If you choose to comments on issues in this section, please include the caption ''QAPI'' at the beginning of your comments.]

The existing § 418.66, Condition of participation—Quality assurance, relies on a problem-oriented approach to identify and resolve patient care issues. Failure to meet the quality assurance condition is consistently one of the top 10 deficiencies cited by surveyors nationwide. According to the hospice industry associations, hospices are no longer using the quality assurance model. During the last decade the health care industry, including the hospice industry, has moved beyond the problem-oriented, after-the-fact corrective approach of quality assurance to an approach that focuses on a pre-emptive plan that continuously addresses quality assessment and performance improvement (QAPI). Hospice industry associations have indicated that their upgraded QAPI systems are incompatible with the existing quality assurance condition. Therefore, the providers who have moved beyond quality assurance in order to make meaningful and sustained quality improvements in their own programs are actually in violation of the outdated quality assurance condition.

On the other end of the spectrum are providers who are truly deficient because they do not have any quality program. These providers would find more guidance in the proposed regulation. In the following section of this preamble we will discuss two publicly available resources for data measures, an integral part of the proposed QAPI requirement. In the proposed regulation we have outlined when those should be collected and what role they play in the proposed QAPI condition. In addition, we have described the scope of the proposed QAPI program requirement, the guidelines for identifying performance improvement activities, and the individuals responsible for ensuring that a hospice has a QAPI program. The proposed regulations provide hospices that are unsure of what is expected of them with the guidelines to begin tailoring a QAPI program that meets their needs and circumstances.

Therefore, we believe that this proposed condition will reduce the number of deficient providers by recognizing those who are practicing QAPI and guiding reluctant providers to meet current standards of practice. The proposed QAPI requirement would raise the performance expectations for hospices seeking entrance into the Medicare program, as well the expectations of those currently participating in Medicare. We are proposing that each hospice develop,

implement, and maintain an effective, continuous quality assessment and performance improvement program that stimulates the hospice to constantly monitor and improve its own performance, and to be responsive to the needs, desires, and satisfaction levels of the patients and families it serves.

The desired overall outcome of this proposed CoP is that the hospice will drive its own quality improvement activities and improve its provision of services. With an effective quality assessment and performance improvement program in place and operating properly, the hospice can better identify and reinforce the activities it is doing well, identify its activities that are leading to poor patient outcomes, and take actions to improve performance.

This proposed condition requires the hospice to develop, implement, and maintain an effective data driven quality assessment and performance improvement program (QAPI). The program establishes a planned approach to quality improvement and takes into account the complexity of the hospice's organization and services, including those provided directly or under arrangement. The hospice must take whatever actions are necessary to implement improvements in its performance as identified by its quality assessment and performance improvement program. The hospice is also responsible for ensuring that the professional services it offers are carried out within current clinical practice guidelines as well as professional practice standards applicable to hospice care.

In the first proposed standard under this condition at § 418.58(a), Standard: Program scope, we are proposing that the hospice's quality assessment and performance improvement program must include, but not be limited to, an ongoing program that is able to show measurable improvement in indicators that are linked to improving palliative outcomes and end-of-life support services. We expect that a hospice will use standards of care and the findings made available in current literature to select indicators to monitor its program. The hospice must measure, analyze, and track these quality indicators, including areas such as adverse patient events and other aspects of performance that assess processes of care, hospice services, and operations. Adverse patient events, as used in the field, are occurrences that are harmful or contrary to the targeted patient outcomes.

The second proposed standard under § 418.58(b) Program data, would require the hospice program to incorporate quality indicator data, including patient care data and other relevant data, into its QAPI program. This would include data that are received from or submitted to hospice professional organizations. A fundamental barrier in identifying quality care at the end of life is the lack of measurement tools. Measurement tools can identify opportunities for improving medical care and examining the impact of interventions.

CMS does not currently require the submission of data from hospices to calculate quality measures but is interested in the development of a set of measures. Hospice measures were submitted and discussed as part of the recent National Quality Forum process identifying home health measures but were withdrawn and added to the more focused end of life discussions. CMS would be interested in comments regarding clinical measures, patient experience of care measures, and systems measures (use of information technology, staffing, follow up mechanisms) specific to hospice care. These comments should include existing measures in use, measures to be developed, data collection methods and issues, and how measures are currently being used. We are especially interested in the feasibility, usability, if the measures presented are proprietary or publicly available, and burden of collecting and reporting the measures.

An example of available measurement tools would be the hospice outcome measures, data elements, tools, and instructions developed by a hospice industry task force in which the CMS participated as a stakeholder. A Task Force initiative was sponsored and convened by the National Hospice Work Group (NHWG) and the National Hospice and Palliative Care Organization (NHPCO) in 1999. We participated in developing the measures and provided technical assistance for pilot testing the measures. In addition to the work that has already been done in this area, we are committed to working with all relevant interest groups and associations as they develop and provide hospices with model quality assessment and performance improvement programs and other services.

The work of the Task Force resulted in measures addressing the outcome domains of self-determined life closure, comfortable dying, safe dying, and effective grieving. The hospice industry moved to include these measures in the data set that they encourage member hospices to use and report. The data elements, tools, and instructions for using the measures are publicly available on the NHPCO website *http://www.nhpco.org.*

If a hospice chooses to participate in this voluntary process as described in the NHPCO web site, it would collect the specified data elements, analyze the data to assess its performance, and implement performance improvement projects to address weaknesses while reinforcing strengths. A hospice may also choose to submit its data to the NHPCO or its contractor. The national reporting process includes pertinent utilization data, appropriateness and effectiveness of services, and patient and family satisfaction. Reports are then generated by the NHPCO for hospices to compare their performance with other hospices.

All hospices that choose to utilize the NHPCO reporting process will need to follow the HIPAA Privacy Rule. We believe that participating in the NHPCO reporting process in order to improve the quality of care delivered to patients would probably be deemed to be part of the hospice's health care operations under the HIPAA Privacy Rule. The NHPCO would be doing work on behalf of the hospice. Therefore, it appears that the hospice and the NHPCO would be required to have a business associate agreement, ensuring that the NHPCO would protect the health information submitted by the hospice. Sample business associate language is available at *http://www.hhs.gov/ocr/hipaa/contractprov.html.* Hospices should confer with their legal counsel to ensure that their disclosures are in compliance with the Department's rules. Once the business associate agreement was in place and the hospice began to submit its data, it would not need individual authorization to disclose protected health information to the NHPCO. In addition, the hospice would not need to account for the disclosures to the NHPCO.

We are not proposing to require that hospices use any particular process or outcome measures. However, a hospice that uses the available quality measures may be able to expect an enhanced degree of insight into the quality of its services and patient satisfaction than if it began the outcome-measure development process anew. In addition to the NHPCO measures, there are many other resources available. One of these resources, for example, is the ''TIME: Toolkit of Instruments to Measure End of life care,'' developed by Brown University. It can be found at *http://www.chcr.brown.edu/pcoc/toolkit.htm.* This Toolkit takes steps toward crossing the measurement barrier by creating patient-focused, family-centered survey instruments that address the needs and

concerns of patients and their families, as defined by them.

The hospice could also develop its own data elements and measurement process as part of its quality assessment and performance improvement program. A hospice is free to develop a program that meets its needs. We recognize the diversity of provider needs and concerns with respect to QAPI programs. As such, a provider's QAPI program will not be judged against a specific model.

Under the proposed standard, Program data, found at § 418.58(b), the hospice is expected to monitor the effectiveness of services and be able to target areas for improvement. The main goal of the quality assessment and performance improvement standard is to identify and correct ineffective and/or unsafe care. We expect hospices to assess their patient load and identify circumstances that could lead to significant patient care issues and concentrate quality assessment and performance improvement energies in these areas. For example, patients with minimal support care, those experiencing frequent exacerbations of symptoms, and those whose diagnosis and care may be unique to the hospice, may be the subject of more intense quality assessment and performance improvement activity. We expect a hospice to be able to demonstrate consistent performance progress in successful quality assessment and performance improvement interventions.

The third standard under the quality assessment and performance improvement program at proposed § 418.58(c), Program activities, states that the hospice must set priorities for its performance improvement activities that: focus on high risk, high volume and problem-prone areas; consider the prevalence and severity of identified problems; and give priority to improvement activities that affect palliative, patient safety, and quality of care outcomes. We expect that a hospice would take immediate action to correct any identified problems that directly or potentially threatened the care and safety of patients. Prioritizing areas of improvement is essential for the hospice to gain a strategic view of its operating environment and to ensure the consistent quality of care provided over time.

In § 418.58(c) we are also proposing to require the hospice to track adverse patient events, analyze their causes, and implement preventive actions that include feedback and learning throughout the hospice. The hospice's quality assessment and performance improvement program is expected to view staff as full partners in quality improvement. Because staff members are in a unique position to provide the hospice with structured feedback on its performance and suggestions on how performance can be improved, we expect the hospice to demonstrate how staff contribute to its quality improvement program.

We are proposing at § 418.58(d), Performance improvement projects, to require that the number and scope of improvement projects conducted annually must reflect the scope, complexity, and past performance of the hospice's services and operations. The hospice must document what improvement projects are being conducted, the reasons for conducting them, and the measurable progress achieved on these projects. We believe that giving hospices the flexibility to review their own organization and quality performance and improvement program may improve the effectiveness and efficiency of their services, improve the outcomes of care they provide, and potentially improve beneficiary satisfaction with their services.

We are proposing at § 418.58(e), Executive responsibilities, to require the hospice's governing body to be responsible and accountable for ensuring that the ongoing quality improvement program is defined, implemented, and maintained. The governing body must ensure that the program addresses priorities for improved quality of care and patient safety. The governing body must also specify the frequency and detail of the data collection and ensure that all quality improvement actions are evaluated for effectiveness. The governing body's most important role is to ensure that staff are furnishing and patients are receiving the most appropriate level of care. Therefore, it is incumbent on the governing body to lend its full support to agency quality improvement and performance improvement efforts.

We are specifically soliciting public comments on this proposed condition of participation.

Condition of Participation: Infection Control (Proposed § 418.60)

[If you choose to comments on issues in this section, please include the caption ''INFECTION CONTROL'' at the beginning of your comments.]

There is no current requirement for infection control other than the requirement at § 418.100(a) that ''* * * each patient is to be kept comfortable, clean, well groomed, and protected from accident, injury, and infection.'' We are now proposing a new CoP due to the seriousness and hazards of infectious and communicable diseases. There is a substantial amount of research from government agencies and private organizations regarding the effect of infections and communicable diseases in the inpatient environment. This research documents their widespread prevalence. While there is less research that examines infections and communicable diseases in the home, the effect of both on the health and safety of patients and the cost of patient care cannot be dismissed. In response, the health care industry has developed guidelines and recommendations for managing preventative programs. For example, the Association for Professionals in Infection Control and Epidemiology, Inc. have published ''Requirements for infrastructure and essential activities of infection control and epidemiology in out-of-hospital settings: A Consensus Panel report'' (*http://www.apic.org/pdf/cpinfra2.pdf*). The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) responded to the issue by designing new infection control standards for, among others, home care providers. These standards will become effective in 2005. Due to the negative effects on patient health and safety that are posed by infections and communicable diseases, and due to the significant amount of public, industry, and government attention that this issue has generated, we believe that hospices need to address infection control in a more complete manner.

In this proposed CoP, we are requiring hospices to take specific actions to address the prevention and control of infections and disease, and to educate patients, staff, and caregivers on their hazards, prevention, and control. It is essential that agencies consider the devastating effects of rampant communicable disease as they carry out their quality assessment and performance improvement programs. As a result, we expect the hospice to maintain an effective and up-to-date infection control program that may be part of its overall quality assessment and performance improvement program.

We recognize that a hospice cannot be directly responsible for the maintenance of an infection-free environment in an individual's home or inpatient setting. We are proposing in § 418.60(a), Prevention, that hospices follow accepted infection control standards of practice and ensure that all staff that provide hospice services know and use these current best prevention practices to curb the spread of infection. Periodic

training is one way to assure staff understanding.

In § 418.60(b),Control, we are proposing that the hospice engage in an ongoing system-wide program that focuses on the surveillance, identification, prevention, control, and investigation of infections and communicable disease. We expect the hospice to use best control practices in this endeavor. We are also expecting that each hospice educate its staff, as well as patients, families, and other caregivers in the ''current best practices'' for controlling the spread of infections within the home during the course of the family/care givers' interactions. Where infection and/or communicable disease is identified, we expect that this information is made part of the hospice's quality assessment and performance improvement program.

In § 418.60(c), Education, we are proposing a standard allowing the hospice flexibility in meeting its infection control, prevention and education objectives. For example, the amount of training in infection control necessary for the hospice's personnel would depend on the patient mix and experience of the staff. While we would expect that established best practices be adhered to, we are not proposing any specific approaches to meeting this requirement. However, all staff and family will be educated on the use of standard precautions for the safety of the patient, family and caregivers. We will expect to see clear evidence that the hospice aggressively seeks to minimize the spread of disease and infection through the use of effective techniques by its staff and through its efforts to help families and care givers understand what can and should be done to minimize infection.

We are specifically soliciting public comments on this proposed condition of participation.

Condition of Participation: Licensed Professional Services (Proposed § 418.62)

Sections of current regulations at § 418.82, Nursing services; § 418.84, Medical social services; and § 418.92, Physical therapy, occupational therapy and speech-language pathology, identify detailed tasks that must be performed by agency staff.

We are proposing to delete § 418.82, § 418.84, and § 418.92, and replace them with a more simplified condition, licensed professional services. Instead of identifying detailed tasks, we are broadly describing the expected contributions of the licensed professionals who are furnishing hospice services.

We are proposing that licensed professionals who provide services to hospice patients either directly or under arrangement must participate in coordinating all aspects of care, including updating the interdisciplinary comprehensive assessments, developing and evaluating plans of care, participating in patient and family counseling, participating in the quality assessment and performance improvement plan, and participating in in-service training. The expected outcome is the coordinated, comprehensive, interdisciplinary delivery of appropriate and effective licensed professional services delivered and supervised by health care professionals who practice under State licensure requirements and the hospice's policies and procedures. Licensed professional services, for purposes of this section, include skilled nursing care, physical therapy, speech-language pathology, occupational therapy, and medical social services. The services of these licensed professionals are described in more detail under the core services condition proposed at § 418.64 and the non-core services condition at § 418.70.

Medicare makes a distinction between providing services directly, as opposed to providing services under arrangement. The most common way services are provided directly is through the use of employees. The common law definition of ''employee'' fundamentally relates to whether a person is under control by the entity or individual providing the services. The ''physician referral provisions'' at section 1877(h)(2) of the Act references the Internal Revenue Service (IRS) ''employee'' definition. Section 1877(h)(2) provides that an individual is considered to be ''employed by'' or an ''employee'' of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

Condition of Participation: Core Services (Proposed § 418.64)

The conditions of participation containing the current core services requirements are in § 418.80, Furnishing of core services; § 418.82, Nursing services; § 418.84, Medical social services; § 418.86, Physician services; and § 418.88, Counseling services. We are proposing to combine these into a single condition. We are also proposing to incorporate the requirement at existing § 418.50(b)(3) that core services be provided in a manner consistent with accepted standards of practice.

This section has been revised to reflect changes to the Act made by section 946 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (''MMA''). In accordance with that provision, we are proposing to allow a hospice (the primary hospice) to enter into arrangements with another Medicare certified hospice to obtain core hospice services. This could be done under extraordinary or other non-routine circumstances. Pursuant to Section 1861(dd)(5)(D) of the Act, as added by section 946(a) of the MMA, those circumstances are: Unanticipated periods of high patient loads; staffing shortages due to illness or other short-term temporary situations that interrupt patient care such as natural disasters; and temporary travel of a patient outside the hospice's service area. We believe that the new MMA provision authorizes us to propose that hospices may not routinely contract for a specific level of care (*e.g.*, continuous care) or for specific hours of care (*e.g.*, evenings and week-ends), as these are regularly occurring situations that hospices are able to plan staffing for.

We propose to require that contractual arrangements under the provision be set forth in a legally binding written agreement between the hospices. The written agreement would ensure that contracted staff meet all hospice personnel qualifications and receive necessary training. The primary hospice would be responsible for enforcing the contractual provisions. This would ensure that the primary hospice maintains professional management responsibility for the service(s) being provided and the individual(s) providing such service(s), as described in sections 418.62, Skilled professional services and 418.100, Organization and administration of services. These sections require contracted services to be provided according to professional standards and practices. Finally, contracted individuals would be required to actively participate in the coordination of care, including patient assessment and care planning, and in the primary hospice's in-service training and quality assessment and performance improvement programs.

The physician services requirement would be changed to allow the use of contracted physicians, including the medical director (see proposed 418.102).

In proposed § 418.64(b), Nursing services, we would add specific language to address the role of nurse practitioners in providing hospice care. The services provided by nurse practitioners continue to be guided by

Medicare statutory requirements. Within these statutory requirements, we propose to allow nurse practitioners to perform many other hospice functions that are in the scope of their practice and license, as well as within the laws of the State in which they practice.

In this standard we have also proposed to allow hospices to provide certain types of nursing services under a legally binding written contract. This change also results from section 946 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which added new 1861(dd)(5)(E) to the Act. These nursing services must be highly specialized and provided non routinely and so infrequently that their provision by hospice employees would be impracticable and prohibitively expensive. We recognize that it may be cost-prohibitive for a hospice to employ a nurse that possesses very highly specialized skills when he or she may only care for a few patients a year. By allowing hospices to contract with specialized nursing providers or others to provide these highly specialized nursing services to the few patients who require them, hospices will be able to better implement an efficient staffing plan and ensure proficiency in the skilled service being provided. Highly specialized services, as described, would not include continuous care because, while time intensive, such care does not require highly specialized nursing skills.

As with all other contracting arrangements, the hospice would be required to maintain professional management responsibility for the service(s) being provided under arrangement as well as the individual(s) providing them. The responsibilities of both the primary hospice and the ''lending'' nursing provider would need to be outlined in the written agreement, and there would have to be a mechanism in place to ensure that the terms of the agreement were met. To that end, the contracted individual(s) would have to provide care in accordance with professional standards of practice; actively participate in the coordination of care, including the comprehensive patient assessment and the formulation of the plan of care; and actively participate in the hospice's inservice training and quality assessment and performance improvement programs.

In proposed § 418.64(c), we are proposing to maintain the current medical social services requirement found at § 418.84. This standard would continue to require that medical social services be provided by a qualified social worker under the direction of a physician. This standard would also require that medical social services, when accepted by a patient and family, be based on an assessment of that patient's psychosocial needs.

In proposed § 418.64(d), we address the counseling services that would be available to hospice patients. Those services would be bereavement, nutritional, and spiritual counseling. In the bereavement counseling section, we propose that a hospice would be required to have an organized program of bereavement services furnished under the supervision of a qualified professional with experience in grief/loss counseling. These services would be required to be made available to individuals identified in the bereavement plan of care up to one year following the death of the patient and would reflect the needs of those individuals. When appropriate, residents and staff of a SNF/NF, ICF/MR, or other facility would be offered bereavement services.

In the nutritional counseling section, we propose to alter the standard to allow qualified individuals such as dietitians and nurses to furnish this service, provided that it is within their scope of practice and expertise according to State law. We believe that allowing other qualified individuals to participate in nutritional counseling will give hospices greater flexibility and will help ensure that all hospice patients have access to this service when needed. This proposal for increased flexibility is a result of recommendations made by the Secretary's Advisory Committee on Regulatory Reform.

In the spiritual counseling section we propose that a hospice would be required to assess the patient's and family's spiritual needs and provide spiritual counseling to meet those needs in accordance with the patient's and family's beliefs and desires. If a patient and family do not desire spiritual counseling, then they would not have to be provided this service. If a patient and family do desire spiritual counseling, then a hospice would be expected to facilitate visits by local clergy, pastoral counselors, or others to the best of its ability. We have examined the relevant jurisprudence regarding the provision of spiritual counseling by Medicare certified hospices (Kong v. Scully *et al.* 341 F.3d 1132 (9th Cir. 2003) reh. den. as amended, 357 F.3d 895 (9th Cir. 2004). We do not see any impediment to requiring hospices to offer spiritual services if a patient and family so desire.

Condition of Participation: Nursing Services Waiver of Requirement That Substantially All Nursing Services Be Routinely Provided Directly by a Hospice (Proposed § 418.66)

[If you choose to comment on issues in this section, please include the caption ''STATUTORY NURSING WAIVER'' at the beginning of your comments.]

The requirements for obtaining a nursing services waiver as provided by section 1861(dd)(5) of the Act is currently set forth in § 418.83, and remains virtually unchanged in this proposal. This condition provides hospices the opportunity to obtain a waiver from the requirement that substantially all nursing services be routinely provided directly by the hospice. The Act specifies that to obtain a waiver a hospice must be located in an area that is not an urbanized area, must have been in operation on or before January 1, 1983, and must demonstrate a good faith effort to hire a sufficient number of nurse employees. Section 1861(dd)(5)(B) of the Act specifies that if a waiver is requested by an organization that meets the statutory requirements, and if it is submitted in the form and contains the information required by the Secretary, the waiver will be deemed granted unless the request is denied in 60 days after the request is received by the Secretary.

This waiver, set in statute, may be obsolete. We do not know how many hospices meet the criteria for the waiver, nor do we know if any hospices actually use the waiver. We request comments on the use of this waiver.

Condition of Participation: Furnishing of Non-Core Services (Proposed § 418.70)

The current CoP governing the provision of other services is contained in § 418.90. The hospice must ensure that the services described in § 418.72 through § 418.78 are provided directly by employees of the hospice or by others under an arrangement with the hospice. This is discussed further in proposed § 418.100. As with core services, non-core services should be provided in a manner consistent with current standards of practice.

Condition of Participation: Physical Therapy, Occupational Therapy, and Speech-Language Pathology (Proposed § 418.72)

Currently, the CoP concerning physical therapy, occupational therapy, and speech language pathology is laid out at § 418.92. We are proposing to recodify this CoP at § 418.72 without changes.

Condition of Participation: Waiver of Requirement—Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Dietary Counseling (Proposed § 418.74)

We are proposing a new CoP that provides for a waiver of the requirement that physical therapy (PT), occupational therapy (OT), speech-language pathology (SLP) and dietary counseling services be provided as needed on a 24-hour basis. In addition, the waiver allows the hospice to provide the above services directly or under arrangements made by the hospice, as specified in current § 418.56.

We may approve a hospice's request for a waiver of the requirement that it furnish PT, OT, SLP and/or dietary counseling services if it is located in a nonurbanized area and can demonstrate that it has been unable, despite diligent efforts, to recruit appropriate personnel. Hospices will be required to submit evidence of their efforts to hire. We will apply similar requirements as are used for the nursing services waiver requests found in proposed § 418.66. As in the case for a waiver of nursing services, eligibility for a waiver is based on the primary location of a hospice. For a hospice that operates in several areas, its primary location is considered to be the location of its central office. The hospice must provide evidence that it made a good faith effort to hire a sufficient number of PTs, SLPs, OTs, and dietary counselors to provide services directly through hospice employees or under arrangement.

Condition of Participation: Home Health Aide and Homemaker Services (Proposed § 418.76)

Section 1861(dd)(1)(D) of the Act requires Medicare covered home health aide services to be furnished by an individual who has successfully completed training or a competency evaluation program that meets the requirements established by the Secretary. This section also provides for coverage of ''homemaker'' services.

Currently, the condition of participation concerning home health aide and homemaker services is set forth at § 418.94. We are proposing in § 418.76 that a home health aide completes a State-established or other training program, and in § 418.76(b) we outline requirements that this training must meet. Except for minor reorganization, these training requirements are consistent with existing home health aide requirements in § 484.36.

For example, we would continue to permit a home health aide to meet the proposed § 418.76(a), Home health aide qualifications, requirement in one of three ways: by completing a training and competency evaluation program that meets the proposed training requirements, by completing a competency evaluation program, or by completing a State licensure program that meets the proposed training requirements. We propose to include three separate ways to meet the proposed requirement because we understand that home health aides come to hospices with various levels of experience and qualifications. We would expect that, if a State licenses home health aides, then an aide would meet those licensure requirements and would, in fact, be licensed by that State. If a State does not have licensure requirements, then we would expect that a home health aide who had not previously participated in a training program that meets the proposed requirements would be trained in a program that meets the proposed requirements. In addition, we would expect that, following such training, that aide would be evaluated in a systematic way to assess his or her skills and competencies before performing patient care. If, however, a home health aide has already completed a training program that meets the proposed requirements while employed at another provider, then we would only expect the aide to complete a competency evaluation program at his or her new employer. We believe that this would make it easier for aides to change employers and faster for hospices to get qualified new employees out in the field. One of the skills a home health aide would be required to master is the ability to observe, report, and document patient status and the care or service furnished. We believe that clear and effective communication between the many providers of hospice care is an important part of ensuring high quality patient care. We believe that a home health aide should be able to both verbally report and document in writing what he or she observes and does at a patient's home.

Three standards have been particularly adapted for the hospice conditions of participation. First, § 418.76(j), homemaker qualifications, has been adapted from the existing § 418.94. The proposed standard clarifies that a qualified homemaker is a home health aide as described in § 418.76 or an individual who has met the standards in § 418.202(g) and has successfully completed hospice orientation addressing the needs and concerns of patients and families coping with a terminal illness. Homemaker services may include assistance in maintenance of a safe and healthy environment to enable the patient to benefit from care that is furnished.

Second, § 418.76(h), Supervision of home health aides, would be revised from the current § 484.36(d) to require that a registered nurse or appropriate qualified therapist conduct an on-site supervisory visit every 28 days while the home health aide is providing care. Thorough supervision of home health aides is crucial to ensuring that the patient's and family's needs are being met, and conducting supervisory visits when the aide is present and performing his or her duties is the only way to provide such thorough supervision. On-site supervisory visits will still be required every 14 days as in the current rule at § 484.36(d)(2), but the aide would not be required to be present for these visits. This supervision schedule would allow hospices to maintain control over the quality and continuity of care being provided, and would help ensure that all patients receiving home health aide services are having their needs met by such services.

Finally, § 418.76(k) would require a member of the interdisciplinary group to coordinate homemaker services, and supply instructions for the homemaker on duties to be performed. The homemaker would be required to report all concerns about the patient or family to the member of the IDG who was coordinating the homemaker services. We have proposed these changes to ensure proper training and supervision, and to protect the quality of the homemaker services provided.

Condition of Participation: Volunteers (Proposed § 418.78)

The current CoP for volunteers is located at § 418.70. We are proposing to recodify this CoP at § 418.78 with minor changes. We are removing the existing § 418.70(f), regarding the availability of clergy, because the role of the pastoral, clergy, or other spiritual counselor is described in proposed § 418.56(a)(1)(iv), Interdisciplinary group, care planning and coordination of services. This change does not preclude the hospice from continuing to use or starting to use clergy as volunteers.

Subpart D, Conditions of Participation, Organizational Environment

Condition of Participation: Organization and Administration of Services (Proposed § 418.100)

[If you choose to comment on issues in this section, please include the caption ''ORGANIZATION AND

ADMINISTRATION'' at the beginning of your comments.]

We are proposing to revise existing regulations at § 418.50, General provisions, § 418.52, Governing body, and § 418.56, Professional management, by creating a new condition. This new condition would simplify the structure of these current requirements and clarify new performance expectations for the governing body. We believe the structure of the current requirements does not establish clear performance expectations for the operation of all services. The overall goal of the revised requirement would be to ensure a management structure that is organized and accountable. We believe that a well-managed hospice will be more likely to allocate resources so that patients maintain their highest functional capacity.

In the proposed organization and administration of services condition (that is, § 418.100), we have taken the current CoPs and proposed changing them to standards:

- Governing body and administrator (existing § 418.52).
- Continuation of care (existing § 418.60).
- Professional management responsibility (existing § 418.56).
- In-service training (existing § 418.64).

We would also include a standard clearly listing the services that the statute requires hospices to furnish. We are also proposing to add a new standard for in-service training that would require a hospice to provide in-service training to all individuals, including volunteers, to address identified skill and competency gaps. The hospice would be required to have written policies and procedures describing its methods for assessing skills and competency. It would also be required to maintain a written description of in-service trainings offered during the previous 12 months.

Currently, § 418.50(b)(3), Required services; § 418.52, Governing body; § 418.82(c), Acceptable standards of practice; § 418.92(a), PT, OT and SLP; and § 418.96(a), Administration of drugs and biologics, all exist as separate standards. To emphasize the importance of continuity of care and the focus on quality, regardless of the site of service, we are proposing to move these existing provisions and incorporate their performance expectation into the quality assessment and performance improvement program that is proposed at § 418.58.

We have long used the term ''in accordance with accepted standards of practice,'' in various provider and supplier requirements, (such as in the existing § 418.82(c)) to set a performance expectation and to be able to employ regulatory authority to shed light on inappropriate and/or dangerous practices. We are proposing to retain this authority and move the existing § 418.82(c) into § 418.64, Core services and § 418.70, Furnishing of non-core services.

In the proposed governing body and administrator standard at § 418.100(b) we emphasize the responsibility of the hospice governing body (or designated persons so functioning) for the management and provision of all hospice services including fiscal operations, quality assessment, performance improvement, and the appointment of the administrator. The actual approach to the administration of the hospice is left to the discretion of the governing body, thereby affording the hospice management flexibility. The proposed governing body standard reflects our goal of promoting the effective management and administration of the hospice as an organizational entity without dictating prescriptive requirements for how a hospice must meet that goal.

Section 418.100(c), Services, includes nursing, medical social services, physician services, counseling services, home health aide and homemaker services, therapy services, short-term inpatient care and medical supplies. The nursing services, physician services, and drugs/biologicals as specified in § 418.100(c)(2) must be routinely available on a 24-hour basis. All other covered services must be available on a 24-hour basis when reasonable and necessary to meet the needs of the patient and family.

In § 418.100(d), Continuation of care, the current standard is at § 418.60. We are proposing to recodify this section at § 418.100(d) without change.

In § 418.100(e), Professional management responsibility, we are proposing to revise some of the current requirements found at § 418.56(b) and (c). This standard would require written agreements for services furnished under arrangement, and would require that the hospice retain professional management and supervisory and financial responsibility for all services that are provided to the patient and family. The hospice would be required to ensure that all services provided are authorized by the hospice, are furnished in a safe and effective manner by qualified personnel, and that items and/or services specified in the plan of care are provided.

In § 418.100(f)(1), we are proposing a new standard to address the issue of multiple service locations. Our goal is to establish clear requirements in order to ensure patient comfort, patient safety, and the provision of a consistent level of care throughout the hospice organization. This provision is intended to codify long-standing Medicare survey and certification policy, which allows for the operation of multiple locations by a single hospice provider with a single Medicare agreement.

We are adding the definition of a hospice satellite location. The way in which hospices are organized has changed since the original regulations were promulgated. Today, unlike small community based hospices that were operating when the Medicare hospice benefit first began, it is common to find large hospice organizations serving a patient population widely dispersed throughout a sizeable geographic area. Some existing hospices operate from multiple locations. We believe it is appropriate to develop a basis in regulation to better clarify this organizational structure and we have been asked by hospices to more fully consider the nature of the relationship between a hospice and a satellite location.

We expect that any hospice that requests to establish a satellite location will be able to demonstrate how it is able to manage and monitor all of the services provided in its entire service area, including services from a satellite location. Patients who receive care and services from a hospice satellite location must receive the full range of services that are documented in the plan of care. We will consider the following factors in our review of a hospice's request to establish a satellite location:

- The hospice's ability to supervise the satellite location to ensure the timely provision of quality care for patients and families receiving care.
- The hospice's past compliance history.
- Relevant State issues and recommendations including a reciprocal agreement between the States to assure that at least one of the State agencies assumes responsibility for any necessary surveys of the satellite location in situations in which a hospice provides services in satellite locations across state lines.
- The hospice's assurance that each patient receives care from an assigned interdisciplinary group that works effectively together to identify and meet the physical, social, emotional, and spiritual needs of the hospice patients and families receiving care.

Before operating a satellite location, a hospice must enroll with the fiscal intermediary and notify the State agency

and CMS of all currently approved satellite locations at the time it requests approval for any additional satellite locations. If a hospice provides care and services to Medicare beneficiaries at an unapproved or disapproved satellite location, such services may be determined to be non-covered. At the time of any satellite location closure the hospice is expected to notify the fiscal intermediary, State agency and CMS.

Hospice satellite locations are also subject to survey by the State survey agency or CMS regional office. Deficiencies that are identified at any satellite location will apply to the entire hospice issued the provider agreement number. Satellite locations must comply with the hospice conditions of participation at § 418.52 through § 418.116.

Proposed § 418.100(g), Inservice training, applies to volunteers and employees, including those employed under arrangement or contract. We are expecting a hospice to take steps to develop appropriate inservice programs or to arrange to acquire training from others.

We are not dictating a specific inservice training program, but rather we expect each hospice to determine the scope of its own program, including the manner in which it chooses to assess competence levels, determine training content, and determine the duration and frequency of training.

We are specifically soliciting public comment on this proposed condition of participation.

Condition of Participation: Medical Director (Proposed § 418.102)

[If you choose to comment on issues in this section, please include the caption ''MEDICAL DIRECTOR'' at the beginning of your comments.]

We would revise the existing medical director CoP at § 418.54 by incorporating current requirements and expanding it to illustrate the importance of having a medical director or physician designee coordinate the activities of physicians and other health care professionals to ensure that care is appropriate and reflects the hospice philosophy. To maintain patient care and coordination of services, the medical director or physician designee appointed by the medical director, must either be a hospice employee or under contract with the hospice. A contractual arrangement with another agency or organization is not permitted.

Section 418.102(a), Initial certification of terminal illness, would incorporate the provisions of current § 418.22, and require that the medical director or physician designee review the patient's clinical information and provide written certification that the individual has a medical prognosis that his/her life expectancy is 6 months or less if the illness runs its normal course. The certification would have to be based on the medical director's or physician designee's clinical judgment regarding the normal course of the individual's illness.

In the second standard, § 418.102(b), Recertification of the terminal illness, we would require that the medical director or physician designee review the clinical information and the patient and family's expectations and wishes for hospice care on an ongoing basis and before each updated assessment. Assessments would be required to be updated at least every 14 calendar days according to § 418.54(d). In addition, this standard would also require that the assessment be updated at the time of each recertification. The timeframes for recertification are described in § 418.21.

Within § 418.102(c), Coordination of medical care, we are proposing that the medical director or physician designee and the hospice interdisciplinary group maintain responsibility for coordinating a patient's medical care in all settings, even when multiple physicians are participating in the care. This level of coordination ensures that the patient receives continuous medical care and services that are consistent with the hospice philosophy.

We are also proposing to require that the medical director or physician designee be responsible for the hospice's quality assessment and performance improvement program. This program and implementation of its findings are critical to ensuring that patients receive effective and meaningful care.

We are specifically soliciting public comment on this proposed condition.

Condition of Participation: Clinical Records (Proposed § 418.104)

[If you choose to comment on issues in this section, please include the caption ''CLINICAL RECORDS'' at the beginning of your comments.]

The proposed condition of participation, Clinical records, would incorporate several of the existing requirements in § 418.74 of the current regulation, Central clinical records. We are proposing to add a new requirement that the clinical record contain accurate clinical information that is available to the physician and hospice staff.

The proposed condition continues to require that all clinical records contain past and current findings and that they are maintained for each patient who is admitted by the hospice.

We are also providing an opportunity for the hospice to choose to maintain clinical records electronically if it desires and recognize that some hospices are beginning to maintain electronic records. The use of electronic health records (EHRs) has the potential to improve patient care and improve efficiency. We anticipate that the use of electronic health records will become widespread, and will be required in future hospice conditions of participation.

We also recognize that there may be significant barriers for hospices that are interested in maintaining electronic health records (EHRs) for their patients. We are interested in learning how the final hospice CoPs and/or other future regulations can reduce or eliminate those barriers.

We are interested in public comments on the following areas:

1. What are the components of an electronic health record (EHR)? What are the advantages and disadvantages of using an EHR in a hospice setting?

2. Should an EHR include a personal health record which is accessible to the patient? What are the positive and negative consequences (*e.g.* caregivers less likely to record certain procedures or observations) of personal health records?

3. What are the barriers (*e.g.* technical, clinical) to implementing an EHR system in a hospice?

It is obvious that there are many different issues regarding the institutionalization of EHRs. We are aware that some hospices have already chosen to pursue this option to one degree or another. We are interested in knowing what their experience has been thus far. How have electronic health records impacted the way they allocate and deliver patient care, and how has this, in turn, impacted patient outcomes?

At § 418.104(a), Content, we would retain the requirement that the record include all assessments (including the initial assessment and all updated assessments), plan of care, consent and election forms, and clinical and progress notes. We are proposing the following requirements for the content of the clinical record—

- Advance directive information as described in proposed § 418.52(a)(3);
- Informed consent, authorization and election forms;
- Responses to medications, symptom management, treatments and services;
- Patient process and outcome measures as they relate to the plan of care; and
- Physician certification of terminal illness as required in § 418.22(c) and

described in proposed § 418.102(a) and (b).

We recognize that there has been some confusion between the meaning of clinical note and progress note. To eliminate this confusion, we have defined ''clinical note'' and ''progress note'' in the definitions section. The key differences between clinical and progress notes are that:

1. Clinical notes summarize an actual patient encounter (as this term is used in the field) while progress notes do not necessarily have to; and

2. Clinical notes comprehensively describe the care provided during that encounter while progress notes briefly summarize care furnished (which could cover a span of time) and the patient's response. We believe that these definitions, adopted from the current conditions of participation for home health agencies (42 CFR part 484) will provide needed clarity and will ensure that the records contain information necessary to provide high quality patient care.

We are proposing to add a new standard at § 418.104(b), Authentication, that requires authentication of clinical records. All entries must be legible, clear, complete, and appropriately authenticated and dated. Authentication would include verification of handwritten and/or electronic signatures by signature logs or a computer secure entry of a unique identifier for a primary author who has reviewed and approved the entry. This new standard addresses technological changes in information management such as the computerization of records as well as electronic signatures. A similar requirement is in the conditions of participation for hospitals.

We are proposing to re-codify the existing requirement found in § 418.74(b) as § 418.104(c), Protection of information. This re-codified provision would require that all patient information, including the clinical record and its contents, be safeguarded against loss or unauthorized use. The text would also be revised to reflect that all hospices must also comply with the Privacy Rule published in the **Federal Register** on December 28, 2000 (65 FR 82461) as amended on August 14, 2002 (67 FR 53182) and contained in 45 CFR parts 160 and 164.

Under § 418.104(d), Retention of records, we propose to ensure protection of the patients information by adding a new requirement that patient records be retained for 5 years after the death or discharge of the patient, unless State law stipulates a longer period of time. If the hospice discontinues operation, hospice policies would be required to provide for the retention and storage of clinical records. The hospice would be required to notify the State agency and its CMS regional office where the clinical records would be stored.

Under proposed § 418.104(e)(1), Discharge or transfer of care, we have proposed a new requirement that Medicare/ Medicaid-approved hospice facilities forward a copy of the patient's clinical record and hospice discharge summary to the facility to which the patient is being transferred. This would help to ensure that the information flow between the hospice and the transfer facility is smooth, so that the level of care will continue without being compromised.

Under § 418.104(e)(2), we would add a new requirement that the hospice provide a copy of the patient's clinical record and hospice discharge summary to the attending physician if the patient revoked the election of hospice care or was discharged from hospice because eligibility criteria were no longer met. This requirement was added to ensure that the patient's attending physician would be aware of the most current clinical information.

The hospice discharge summary requirement proposed at § 418.104(e)(3) would be a new requirement and would detail what would be required to be contained in the discharge summary. The purpose of the discharge summary is to provide important clinical information to those medical and other health professionals who will be assuming the care of the patient upon discharge from the hospice. At a minimum, the discharge summary would contain information that accurately describes the patient's stay, current plan of care, recent treatment, symptom, and pain management information, most recent physician orders, and any other documentation that would assist in post-discharge continuity of care.

Under § 418.104(f), Retrieval of clinical records, we would require that clinical records, whether in hard copy or electronic form, be made readily available to, and retrievable by, an appropriate authority.

We are specifically soliciting public comment on this proposed condition of participation.

Condition of Participation: Drugs, Controlled Drugs, Biologicals, Medical Supplies, and Durable Medical Equipment (Proposed § 418.106)

[If you choose to comment on issues in this section, please include the caption ''DRUGS, SUPPLIES, and DME'' at the beginning of your comments.]

This condition of participation revises the current requirement, found at § 418.96, and would clarify that durable medical equipment, supplies, appliances, and drugs and biologicals related to the palliation and management of the terminal illness and related conditions, as identified in the plan of care, must be provided by the hospice while the patient is under hospice care.

In addition, restrictions regarding the use of controlled substances in the patient's home would be conveyed more clearly. We believe that the hospice, as well as the patient and family, need to share in the responsibility and accountability for maintaining controlled substances in the home. Primary responsibility rests with the hospice, and the hospice must assume responsibility to educate the family about the proper use and disposal of drugs and biologicals and the consequences of misuse.

Section 418.106(a)(1), Administration of drugs and biologicals, would require that all drugs and biologicals be administered in accordance with accepted hospice and palliative care standards of practice and according to the patient's plan of care. In § 418.106(a)(2) we are proposing to add a new requirement that the interdisciplinary group be responsible for periodically reviewing the plan of care to determine whether the patient and/or family continues to have the ability to safely administer drugs and biologicals.

Under proposed § 418.106(b), Controlled drugs in the patient's home, the hospice would ensure the safe delivery and accountability of controlled drugs in the patient's home. The hospice would have to have a policy for the tracking, collecting, and disposing of controlled drugs maintained in the patient's home. During the initial assessment, the hospice policy regarding the use and disposal of controlled drugs would be required to be discussed with the patient and family, and the hospice nurse would be required to document that the policy had been discussed with the patient and family. Because controlled drugs can pose significant danger to patients if improperly ingested or abused, educating patients and families may prevent unwanted complications.

In § 418.106(c), Use and maintenance of equipment and supplies, a hospice would be responsible for overseeing the use of durable medical equipment and supplies in the patient's home. Through the Medicare survey process and beneficiary complaints, we have found

that equipment that is not properly maintained does not perform properly and may harm the patient. Under this proposal, the hospice would be responsible for making certain that equipment being furnished under the plan of care is operating safely. The hospice may carry out this responsibility through a contractual arrangement with others, but would continue to maintain primary responsibility.

Stressing the importance of providing families with information and levels of comfort relative to the care being furnished to family members, we are proposing a new medical equipment and supplies requirement. The hospice would be required to take action to ensure that the family received instruction in the safe use of equipment and supplies. In order for the family to participate in providing quality care to the patient, the family members would need to understand how and when to use equipment and supplies.

We are specifically soliciting public comment on this proposed condition of participation.

Condition of Participation: Short-Term Inpatient Care (Proposed § 418.108)

[If you choose to comment on issues in this section, please include the caption ''SHORT TERM INPATIENT CARE'' at the beginning of your comments.]

Under proposed § 418.108, we would retain the requirement that hospices make inpatient care available for pain control, symptom management, and respite purposes, and that care be provided either in the hospice or in a participating Medicare or Medicaid facility.

We would recodify the current requirement found at § 418.98(a), Short-term inpatient care, as § 418.108(a), Inpatient care for symptom management and pain control.

The references to the condition at § 418.108(b), Inpatient care for respite purposes, would no longer focus on process as in the existing § 418.98. Rather, the updated standards reflect expected outcomes of care.

We would eliminate the existing requirement found at § 418.100(a)(2), requiring a registered nurse to provide direct patient care on each shift. We believe that the patient's plan of care and the patient's condition should determine the amount and skill level of nursing care required, as well as the skill level and State licensing requirements of the staff to provide requisite care. If the patient does not need care by a registered nurse, imposing a requirement on a hospice that mandates a registered nurse to be in attendance on a particular shift to serve the patient will have no effect on the patient's care.

Under proposed § 418.108(c), Inpatient care provided under arrangement, we would incorporate many of the existing requirements in existing § 418.56(e). In particular, we would require that a hospice train the personnel who would be providing patient care in an inpatient facility. The hospice model of patient care is very different from the curative model of patient care that medical personnel are trained in. Therefore, in order to ensure that patients in inpatient facilities continue to receive care that is consistent with the hospice philosophy (*i.e.*, proactive pain management, interdisciplinary care), it is important that inpatient facility personnel be trained to understand the hospice philosophy and model of care.

Under proposed § 418.108(d), Inpatient care limitation, and § 418.108(e), Exemption from limitation, we are proposing to re-codify the existing requirements at § 418.98(c) and (d), respectively, without changes.

Condition of Participation: Hospices That Provide Inpatient Care Directly (Proposed § 418.110)

[If you choose to comment on issues in this section, please include the caption ''INPATIENT CARE'' at the beginning of your comments.]

Under proposed § 418.110, we are proposing to revise the existing requirements, currently located at § 418.100, as follows:

Under § 418.110(a), Staffing, we would include the expectation that staffing for all services provided by the hospice reflect the volume of patients, patient acuity, and the level of intensity of the services as reflected in the plan of care to ensure that expected outcomes of care are achieved and negative outcomes are avoided. We also would eliminate our requirement that a registered nurse provide direct patient care each shift when the condition of the patient does not require the care of a registered nurse on each shift. This change would reduce the staffing burden for hospices and is a result of recommendations made by the Secretary's Advisory Committee on Regulatory Reform.We are proposing to remove the requirement in the existing § 418.100(a)(2) that each shift include a registered nurse that provides direct patient care for those patients who are receiving short-term inpatient care for symptom management. We are proposing in § 418.110(b), 24-hour nursing services, that the hospice facility provide 24-hour nursing services that meet the nursing needs of all patients and are furnished in accordance with each patient's plan of care, as well as the skill level of the staff that provides care, in accordance with State licensing requirements. We would require that each patient be kept comfortable, clean, well-groomed and protected from accident, injury, and infection.

When assessing a facility's compliance with this proposed regulation, we would expect to see that the staffing level met the needs of the patients. For example, if a patient experiences unexpected break-through pain and needs additional pain management, we would expect that a staff member with the appropriate skills be available to care for that patient. If a staff member with the appropriate skills, and knowledge is not available to care for that patient and assure that his or her pain is effectively managed, then the hospice would be considered to be out of compliance with this proposed regulation.

In § 418.110(c), Physical environment, we are proposing that the hospice maintain a safe physical environment that is free of hazards for patients, staff, and visitors. In § 418.110(c)(1), Safety management, in paragraphs (c)(1)(i) and (c)(1)(ii), we are proposing that the hospice prevent situations that pose a threat to the health and safety of the patients, others, or property whenever possible. The hospice would be required to promptly report and investigate all incidents that involve injury to patients, staff or visitors, or that involve damage to property. The hospice would be required to report such incidents to the appropriate State and local bodies having regulatory jurisdiction. The hospice would also be required to take action to correct the problems promptly. The hospice would be required to take steps to prevent equipment failures and correct and report any equipment failures promptly. In § 418.110(c)(1)(iii) we have retained the existing requirement at § 418.100(b) that the hospice periodically rehearse with staff a disaster preparedness plan for managing the consequences of natural disasters and other emergencies that affect the hospice's ability to provide care. We believe that special emphasis should be placed on carrying out the procedures necessary to protect the patients and others.

In § 418.110(c)(2), Physical plant and equipment, paragraphs (c)(2)(i) through (c)(2)(iv), we are proposing that there be procedures for the management of light, temperature, and ventilation controls throughout the hospice (including air exchange) for patient care. The hospice

would be required to make battery lamps and flashlights available in all areas not served by an emergency electrical supply source. The hospice would be required to make available an emergency gas and water supply. All equipment would be required to be properly maintained.

In § 418.110(d), Fire protection, we are proposing to recodify, without change, the existing provisions in § 418.100(d). These provisions were amended on January 10, 2003 (68 FR 1374) to adopt the year 2000 version of the Life Safety Code. They were also amended on August 11, 2004 to clarify the effective date of the roller latch prohibition (69 FR 49266). In addition, they were amended on March 25, 2005 (70 FR 15229) to address the use and placement of alcohol-based hand rubs.

Proposed § 418.110(e), Patient areas, would be recodified from § 418.100(e) without change.

Proposed § 418.110(f), Patient rooms, would be revised. We are proposing in § 418.110(f)(3)(iv) that each room accommodate no more than two patients. We are proposing the two patients per room requirement in recognition of the fact that hospice patients in the inpatient setting are critically ill and may be actively dying. These patients and their families need the additional privacy that a two patient room affords them in order to help preserve the patient's comfort and dignity during the dying process. We believe this is the standard accommodation in most facilities.

Due to the potentially high cost of retrofitting older buildings, the proposed rule would allow existing hospice facilities with more than two patients in each room to receive a waiver of this requirement. This waiver would be based on whether or not the hospice was already providing direct inpatient care when this regulation would become effective. That is, if a hospice is providing direct inpatient care in a building on the day before the effective date of a final rule, and they had more than two patients in each room, then the hospice would qualify for a waiver of the proposed requirement. If a hospice chose to begin operating its own inpatient unit after the effective date of a final rule, then it would not qualify for the proposed waiver, and would thus be required to have no more than two patients per room.

The remaining paragraphs in this standard would be virtually the same as in the current requirement (§ 418.100(f), with only minor language changes that would not change the substantive requirements of the regulation.

Proposed § 418.110(g), Toilet/bathing facilities, is linked with patient rooms in the current requirement found at § 418.100(f). We are proposing to revise this requirement as a stand-alone standard. As such, it would highlight our concern for the adequacy of toilet and bathing facilities, and would provide more flexibility for State agency surveyors in evaluating the appropriateness of these facilities. We believe it is important for the privacy and comfort of the patient and family to have toilet and bathing facilities in each patient room, or conveniently located near the patient's room.

We are proposing no changes to existing § 418.100(g) bathroom facilities, except to recodify it at § 418.110(h) and rename it, Plumbing facilities.

In § 418.110(i), Infection control, we are proposing to revise infection control standards to conform to those required of other provider types, such as home health agencies and hospitals. We would require a hospice to establish an infection control program that protects patients, families, and staff against communicable diseases and would prevent and control the spread of infections. The infection control program would be required to follow national infection control standards and be part of the hospice's overall quality assurance and performance improvement and education program. We also propose to retain the requirement that hospices provide a sanitary environment by following accepted standards of practice.

We are not proposing any specific approaches to meeting the infection control requirement, but we would expect to see clear evidence that the hospice aggressively sought to minimize the spread of infection through the use of infection control techniques, such as standard precautions by its staff, and through the efforts made by the hospice to help families and caregivers minimize the spread of infection.

We are proposing to re-codify the current requirement § 418.100(h), Linen, as § 418.110(k) without substantive change.

In proposed § 418.110(l), Meal service and menu planning, we are proposing to revise the existing § 418.100(j). We would make this standard less restrictive, and would emphasize the need for a hospice to focus more on outcomes rather than process. Specifically, we believe that a hospice should focus on meeting the patient's nutritional and plan of care needs. We would eliminate several structural requirements, such as serving at least three meals at regular times, with no more than 14 hours between substantial evening and breakfast meals, and having a staff member trained in food management or nutrition.

In § 418.110(m), Pharmaceutical services, we are proposing to re-codify the existing requirement found at § 418.100(k) without substantive change.

In § 418.110(n), Pharmacist, we would assign this requirement a higher level of importance by making it a standard. However, we would retain the essential elements of the current requirement.

[If you choose to comment on the issues contained in paragraph (o) of this section, please include the caption ''SECLUSION AND RESTRAINT'' at the beginning of your comments.]

Section 418.110(o), Seclusion and restraint, would be a new standard. A number of accidental injuries and deaths across inpatient providers due to the use of seclusion and restraints have been documented. Therefore, we discourage the use of seclusion and restraints, but are aware that their application may be warranted for brief periods or in rare instances. In response to the accidental deaths and injuries, we published (in 1999) a new condition in the hospital CoPs that included a new standard at § 482.13(f), Standard: Seclusion and restraint for behavior management.

The hospital seclusion and restraint CoP was the basis for the proposed hospice seclusion and restraint CoP. We also considered the seclusion and restraint language in section 3207 of the Children's Health Act (CHA), Public Law 106–310, codified at section 591 of the Public Health Service Act (42 U.S.C. 290ii). The CHA provision requires that any health care facility that receives Federal funds, including Medicare approved hospices, protect and promote every patient's right to be free from ''any restraints or involuntary seclusions imposed for purposes of discipline or convenience.'' The CHA clearly described the circumstances in which restraints or seclusion may be appropriate. The proposed seclusion and restraint requirement for hospices would codify the changes made to the Act by the CHA. We believe that adding this new requirement to the hospice CoPs may promote safe use of seclusion and restraints and may prevent accidental injury or death while a patient is receiving care as an inpatient in a hospice.

We have focused this standard on the proper use of seclusion and restraints, the need for hospice personnel to receive training and education in the proper use of seclusion and restraint application and techniques, and the

need for hospice personnel to receive training and education in alternative methods for handling situations that arise. We emphasize that seclusion and restraint may only be used if needed to improve the resident's well-being or protect him or her or others from harm, and only when less restrictive interventions have been determined ineffective. We encourage the public to comment on this standard, especially with respect to instances where seclusion and restraint are appropriate and inappropriate.

Condition of Participation: Hospices That Provide Hospice Care to Residents of a SNF/NF, ICF/MR, or Other Facilities (Proposed § 418.112)

[If you choose to comment on issues in this section, please include the caption ''RESIDENTS RESIDING IN A FACILITY'' at the beginning of your comments.]

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals to continue life with minimal disruption to normal activities while remaining primarily in the home environment.

A participating hospice may provide care to an eligible patient in an environment that the patient chooses to be his or her home. This includes hospice care provided to residents who choose to live in skilled nursing facilities, nursing facilities, intermediate care facilities, mental retardation facilities, and other facilities.

The provision of hospice care to residents of those facilities has come under scrutiny as a result of Operation Restore Trust (ORT) activities and Inspector General (OIG) reports from 1996, 1997, and 1998. An OIG report released in 1997 found that ''contractual arrangements between hospices and nursing homes present vulnerabilities for inappropriate use of excessive Medicare and Medicaid payments being made to hospices or to nursing homes'' (U.S. D.H.H.S. OIG, *Hospice and Nursing Home Contractual Relationships,* Nov. 1997, OEI–05–95–00251. See also, OIG Special Fraud Alert, *Fraud and Abuse, Nursing Home Arrangements with Hospices,* Mar. 1998). In addition, in 2000 the Assistant Secretary for Planning and Evaluation (ASPE) Office of Disability, Aging and Long-Term Care Policy and the Urban Institute published a report entitled ''Synthesis and Analysis of Medicare Hospice Benefit Executive Summary and Recommendations'' (Harvell, Jennie; Jackson, Beth; Gage, Barbara; Miller, Susan; and Mor, Vincent, 2000 March). This report made several recommendations, some of which related to training and hospice care outcome measurement.

The relationship between hospices and nursing facilities was also addressed by the Secretary's Advisory Committee on Regulatory Reform. The committee focused on clarifying the responsibilities of each provider and on the patients accessing the hospice benefit while they are facility residents. Based on the recommendations of the committee, as well as the reports from Operation Restore Trust, the Office of Inspector General, and the Assistant Secretary for Planning and Evaluation, we would add this new condition of participation. We are preparing a separate regulatory document to address long-term care facility obligations regarding residents receiving hospice services.

To ensure that quality hospice care is provided to eligible patients, we are proposing a new condition at § 418.112, Hospices that provide care to residents of a SNF/NF, ICF/MR or other facility. Regardless of where the hospice patient resides, the responsibility for developing and implementing an appropriate plan of care rests with the hospice.

Under proposed § 418.112(a), Resident eligibility, election and duration of benefits, we would specify that it is incumbent upon the hospice to ensure that the resident meets all the same Medicare eligibility requirements for hospice care (found at § 418.20 to § 418.30), as a patient who resides in his or her home in the community.

At proposed § 418.112(b), Professional management, the hospice would be expected to assume full responsibility for all of the hospice care provided to the resident. This would include making arrangements for any inpatient care that the patient would require in accordance with § 418.100. This standard reinforces our belief that continuity of care is crucial for hospice care in any setting.

In proposed § 418.112(c), Core services, (and in accordance with sections 1861(dd)(1) and (2)(A) of the Act), the hospice would be required to provide all necessary core services to its patients in the same manner that it would provide core services to a patient residing in a home in the community. The plan of care would have to identify the care and services that were needed and specify which provider would be responsible for providing that care. It is not reasonable to expect the hospice to delegate any of its standard hospice core services to the nursing or residential facility staff.

In proposed § 418.112(d), Medical director, a hospice medical director would be expected to play an integral role in providing medical supervision to the hospice interdisciplinary group and in providing overall coordination of the patient's plan of care. The medical director's expertise in managing pain and symptoms associated with the patient's terminal disease is necessary, regardless of the setting in which the patient is receiving hospice services to ensure that the hospice patient has access to quality hospice care. Therefore, the medical director must communicate with all facility physicians and the attending physician and other professionals involved in developing and/or implementing the patient's plan of care.

Under proposed § 418.112(e), Written agreement, we are proposing that a comprehensive and legally binding written agreement be developed between the hospice and facility and that it be in effect before any hospice care is provided to a facility resident. The purpose of the written agreement would be to ensure that the duties and responsibilities of the hospice and facility are clearly articulated and executed in a manner that ensures that the resident will receive quality hospice care. The written agreement would be required to include the following:

(1) Written consent and documentation of the patient or the patient's representative that hospice services were desired;

(2) Identification of the services that the hospice and the facility would provide;

(3) The manner in which the facility and the hospice would communicate to ensure that the needs of the patient were addressed and met 24 hours a day; and

(4) A requirement that the facility immediately notify the hospice when—

(i) A significant change in the patient's physical, mental, social or emotional status occurred;

(ii) Clinical complications appeared that suggested a need to alter the plan of care;

(iii) A life threatening condition(s) appeared;

(iv) A need to transfer the patient from the facility arose; and

(v) The patient died.

As the primary entity responsible for the patient's care, the hospice should assume responsibility for determining the appropriate course of care and the decision to change the level of services provided. The hospice would make arrangements for, and remain

responsible for, any necessary continuous care or necessary inpatient care related to the terminal illness.

We would require that the agreement delineate the facility's responsibilities, including room and board and other services and treatment, support or otherwise. We would also require a delineation of the hospice's responsibilities including medical direction and management of the patient, as well as nursing, counseling (including spiritual and dietary counseling), social work, bereavement counseling for family members, the provision of medical supplies and durable medical equipment, and the provision of drugs necessary for the palliation of pain and symptoms associated with the terminal illness. The hospice would be required to provide directly substantially all of the services necessary for the care of the patient's terminal illness.

The hospice would be able to utilize the facility's nursing personnel (where permitted by the facility and by law), for the administration of prescribed therapies included in the plan of care, but only to the extent that the hospice would routinely use the services of a hospice patient's family in implementing the plan of care.

These would be mandatory agreement provisions, but would not limit the scope of the relationship between the hospice and the facility. Additional provisions could be added subject to mutual agreement.

Under proposed § 418.112(f), Hospice plan of care, just as required for hospice services furnished to patients not residing in an inpatient facility, we are proposing that a written plan of care would be required to be established and maintained for each facility patient. The plan of care would be required to be coordinated with and developed by the hospice interdisciplinary group and SNF/NF, ICF/MR, or other facility in collaboration with the attending physician. The care provided would have to be in accordance with the plan. The plan would have to reflect the hospice philosophy in all aspects and be based on an assessment of the patient's needs and unique living situation in the facility. The plan would have to address the patient's current medical, physical, social, emotional, and spiritual needs based on the problems identified in the initial comprehensive and updated comprehensive assessments, and other assessments. Directives for the management of pain would have to be addressed and updated as necessary to reflect the patient's status.

We are proposing that the plan of care identify the care and services that would be needed and specifically identify which provider would be responsible for performing the respective functions that were agreed upon and included in the plan of care. The performance of the functions should reflect the participation of the hospice, SNF/NF, ICF/MR, or other facility, and the patient and family to the extent possible. The plan of care would need to be reviewed at least every 14 days and as needed to reflect changes in the patient's condition. In conjunction with members of the facility's team, the hospice and the attending physician would have to discuss any changes in the plan of care, and these changes would have to be approved by the hospice before implementation.

At proposed § 418.112(g), Coordination of services, we are proposing that the hospice designate a member of the interdisciplinary group to coordinate the implementation of the plan. The hospice would provide the facility with the plan of care, hospice consent form, contact information for hospice personnel involved in the care of the resident, instructions on accessing the hospice 24-hour on-call system, medication information specific to the patient, physician orders, and any advance directives. We believe that these requirements would ensure effective communication between the hospice and the facility.

Under proposed § 418.112(h), Transfer, revocation, or discharge from hospice care, we would specify that the proposed requirement for discharge or revocation found at § 418.104(e) applies. In addition, we would specify that discharge or revocation of the hospice care would not impact the eligibility to continue to reside in a SNF/NF, ICF/MR, or other facility.

At proposed § 418.112(i), Orientation and training of staff, we would specify that the hospice staff would be required to train facility staff who provide care to hospice patients on aspects of the hospice philosophy and unique program features, including policies and procedures, methods of comfort, pain control and symptom management, general principles about death and dying and individual responses, patient rights, appropriate forms, and record keeping requirements.

We are specifically soliciting public comment on this proposed condition of participation.

Condition of Participation: Personnel Qualifications for Licensed Professionals (Proposed § 418.114)

[If you choose to comment on issues in this section, please include the caption ''PERSONNEL QUALIFICATIONS'' at the beginning of your comments.]

We are proposing significant revisions to the personnel qualifications for hospice employees. Specifically, we would provide that in cases where personnel requirements are not statutory, or do not relate to a specific payment provision, we would require personnel to meet State certification or licensure requirements. Under our proposal, the personnel qualifications would fall into three basic categories that include: (1) General qualifications, (2) personnel qualifications for physicians, speech-language pathologists, and home health aides, and (3) personnel qualifications when no State licensing laws or State certification or registration requirements exist. Under our proposed reorganization of part 418, the personnel qualifications would be located at § 418.114. We discuss the personnel qualifications in detail below.

(1) General qualifications (proposed § 418.114(a)).

This category would encompass licensed professionals who provide hospice services directly, either as employees or under individual contract, or under arrangement with a hospice. These professionals must be licensed, or certified or registered to practice by the State in which they perform the functions, as applicable. All personnel who fall into this category must act exclusively within the scope of the State license, certification or registration. Examples of personnel who fall into this category are registered nurses, licensed practical nurses, physical therapists, and physical therapist assistants; all States currently have licensing or certification requirements for these caregivers.

(2) Personnel qualifications for physicians, speech-language pathologists, and home health aides (proposed § 418.114(b)).

Section 1861(r) of the Act defines a physician as a doctor of medicine, osteopathy, or podiatry legally authorized to practice medicine and/or surgery by the State in which that function or action is performed. We would refer to this definition at § 418.114(b)(1). Sections 1861(ll)(1) and (3)(A) of the Act define a qualified speech-language pathologist as an individual with a master's or doctoral degree in speech-language pathology who is licensed as a speech-language pathologist by the State in which the individual furnishes those services. In the case of an individual who furnishes services in a State that does not license speech-language pathologists, the

individual must have successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating the supervised clinical experience), performed not less than 9 months of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary.

Section 1891(a) of the Act also defines the qualifications for home health aides. However, we believe that the description of qualifications for home health aides would be more appropriately located under the home health aide services CoP. Thus, the requirement would be cross-referenced at proposed § 418.76(a).

(3) Personnel qualifications when no State licensing laws or State certification or registration requirements exist.

When a State does not have a licensure, certification, or registration requirement, the hospice would apply the qualifications in § 418.114(c). This category would consist of all current personnel qualifications specified in proposed § 418.3, Definitions. We understand that portion of these qualifications may seem outdated. However, we believe that there may still be individuals who met the requirements of the 1960s and 1970s and who are still practicing in their chosen field today. Therefore, we propose to include these personnel qualifications. We welcome comments on these revisions.

[If you choose to comment on issues related to the qualification standards for social workers, please include the caption ''SOCIAL WORK'' at the beginning of your comments.]

We are specifically requesting comment on the qualifications for a social worker. Hospice care marks the passage from life to death. The services furnished by a hospice takes on a higher level of importance that greatly affects a patient's physical and emotional comfort, and which will be remembered by family members forever. The social worker plays an important role in providing these services to patients and their families. Patients often enter hospice care in a time of crisis and they along with their families sometimes require intense interventions that are handled by a social worker. Patients and their families rely on social workers for emotional support and guidance during the patient's care.

Later, the social worker's goal is to help family members during the bereavement process through in-depth counseling. Bereavement counseling can take many forms, depending on the individuals who will be receiving it. For example, one patient's family may require intimate counseling sessions for the patient's children while a large group session may be more appropriate for nursing facility staff and residents. Determining the exact needs of these individuals and meeting those needs through counseling sessions and other support mechanisms requires the expertise of a qualified social worker.

At present, a social worker is required to possess a bachelor's degree in social work from an accredited school. There is no consensus regarding the optimum qualifications that a social worker must possess when furnishing services to a hospice patient. However, there is strong anecdotal evidence that a social worker who possess a Master's of Social Work (MSW) degree from an accredited institution and who has at least one year of health care experience would provide a higher level patient care. Anecdotal evidence also exists that suggests that patients and families that receive services from a Master's of social work are more satisfied with the care they receive.

In addition to the patient care advantages that MSWs offer, a hospice may anticipate a reduction in overall and per patient costs when utilizing MSWs who have at least one year of experience. A study conducted by the National Hospice and Palliative Care Organization (NHPCO) found that an increase in social work experience after academic training resulted in decreased overall care costs, including nights of continuous care. The study concludes that, ''[h]ospice programs will benefit by hiring the best qualified and most experienced social workers available.'' (Reese, Dana J.; Raymer, Mary; and Richardson, Joan, National Hospice Social Work Survey, 2000 March).

Two issues may contribute to limiting any change in the social work qualification requirement— the availability of personnel to work full time, and the availability of personnel to serve rural areas. Some hospices may not be able to employ an MSW on a full-time basis. Even if CMS were to increase the education requirement to an MSW level, hospices would still be allowed to employ individuals with a bachelor's degree in some circumstances. These individuals would be able to work under the supervision of an MSW and would be identified as social work assistants. A social work assistant would be defined as an individual who has a bachelor's degree from a school accredited by the Council on Social Work Education, or a bachelor's degree in psychology, sociology or another field related to social work.

In 2001, 4,087 MSWs were employed by the nation's 2,316 hospices (National Association for Homecare, 2002 Hospice Industry Report, *http://www.nahc.org/Consumer/hpcstats.html).* We recognize that MSWs may not be available in all areas. If a hospice chooses to also utilize the services of a social work assistant, then the MSW would only have to be employed part-time to supervise the services. According to the NHPCO study, ''[a]ppropriate clinical supervision is essential for social workers. Like any other profession, social workers require supervision by seasoned social work practitioners to continue to grow into high quality skilled professionals.''

We are specifically soliciting comments about whether the care furnished by an MSW should be considered the standard of care for hospice patients. Would an MSW provide a higher level of care than a social worker with a bachelor's degree? Should CMS require that any social worker, regardless of the degree, have at least one year of experience in a health care setting? Should CMS allow social work assistants with bachelor's degrees to function under the supervision of an MSW? Would increasing the qualifications for social workers to an MSW while retaining social work assistants with bachelor's degrees impact patient access to social work services? Would employing both social workers and social work assistants ensure that hospices have the flexibility to meet the needs of patients and their families?

Please note that the policy regarding credentialing would not apply under Medicare Part B, when a specific level or education or training is specified as a precondition for reimbursement. For example, Part B payment may be made for the services of clinical social workers, and the law specifically defines a clinical social worker in section 1861(hh) of the Act. Thus, the definitions contained in this section generally would apply for hospice certification purposes only in States where there were no State licensure requirements.

In § 418.114(d), we are proposing a new requirement that a hospice be required to obtain a criminal background check for all hospice and contract employees before employment at the hospice. We believe that this is an important safety measure to protect both patients and the hospice. We are soliciting public comment on this proposed standard.

Condition of Participation: Compliance With Federal State and Local Laws and Regulations Related to Health and Safety of Patients (Proposed § 418.116)

The provisions concerning licensure requirements for hospices are currently located at § 418.72, Condition of participation: Licensure. We are proposing to expand this condition in the following manner:

We would make a minor revision to the language at existing § 418.72(a), which would require the hospice and its staff to operate and furnish services in compliance with all Federal, State, and local laws and regulations applicable to hospices related to health and safety of patients. The State agency and CMS would exercise discretion in determining whether a violation of an applicable Federal, State, or local law or regulation related to health and safety would be cited as a violation under the Medicare CoPs. We would not cite a hospice whose problem was remedied. We will cite hospices when violations of Federal, State, and local laws and regulations affect the health and safety of patients; the ability of hospices to deliver quality services; the rights and well-being of patients; and/or the management of the hospice and its ability to recruit qualified staff.

Under § 418.116(b), Multiple locations, we would continue to require that the hospice comply with the requirements of § 420.206 regarding disclosure of ownership and control information. We would also provide that the hospice and any other satellite locations operated under the same provider number be licensed in accordance with applicable State licensure laws before the hospice could be reimbursed for Medicare services. This provision seeks to ensure that hospice patients receive the same level of quality care from the appropriate personnel at all sites of service. The requirement that hospices comply with State licensure laws before providing services to Medicare beneficiaries would apply to the hospice as an entity as well as to any personnel furnishing services to hospice patients.

We are proposing to recodify the current requirements at § 418.92(b), regarding laboratory services, at § 418.116(c).

IV. Hospice Crosswalk (Cross Refers Existing Requirements to Proposed Requirements)

The following table shows the relationship of the former sections to the current ones.

DERIVATION TABLE

Current conditions (Part 418, subpart C, D, E)	Citation existing section	Proposed condition	Citation
Scope of Subpart			
Definitions	418.3	Definitions	418.3
General provisions	418.50		
(a) Compliance		Organization and Administration of Services.	418.100(c)(2)
(b) Required services		Organization and Administration of Services.	418.100(c)(2)
(c)(1) 24 hour nursing, physician services, and drugs and biologics.		Organization and Administration of Services.	418.100(c)(1)
(2) Other 24 hour services.			
(3) Utilize accepted standards of practice		Core Services and Furnishing of Non-core Services.	418.64 and 418.72
(d) Disclosure of information		Deleted.	
Medical director: The medical director is: A hospice employee, a doctor of medicine or osteopathy, responsible for the medical component of the hospice's patient care program.	418.54	Medical Director	418.102
Professional management	418.56		
(a) Continuity of care		Deleted.	
(b) Written agreement:			
(1) Identification of services to be provided		Interdisciplinary Group Care Planning and Coordination of services.	418.56(c)
(2) Express authorization of the hospice required for all services.		Organization and Administration of Services.	418.100(e)(1)
(3) Coordination, supervision, and evaluation of contracted services.		Organization and Administration of Services.	418.100(e)
(4) Roles of hospice and contractor in admission, assessment, and interdisciplinary group.		Deleted	
(5) Documentation of services furnished by contractor		Organization and administration of services.	418.100(e)
(6) Personnel qualifications		Organization and administration of services.	418.100(e)(2)
(c) Professional management		Organization and administration of services.	418.100(e)
(d) Financial responsibility.			
(e) Inpatient care:			
(1) Copy of the patient plan of care specifying the services to be provided is given to inpatient provider.		Short term inpatient care	418.108(c)(1)
(2) Inpatient provider abides by hospice patient care protocols and maintains compatible policies.		Short term inpatient care	418.108(c)(2)
(3) Medical record provided to hospice upon request. Must include all inpatient services and events and a copy of the discharge summary.		Short term inpatient care	418.108(c)(3)
(4) Responsibility for implementing agreement provisions		Short term inpatient care	418.108(c)(4)

DERIVATION TABLE—Continued

Current conditions (Part 418, subpart C, D, E)	Citation existing section	Proposed condition	Citation
(5) Hospice responsible for training all care providers		Short term inpatient care	418.108(c)(5)
	NEW	Comprehensive Assessment of the Patient Initial assessment.	418.54
		(a) Time frame for the completion of the comprehensive assessment	
		(b) Content of the comprehensive assessment	
		(c) Update of the comprehensive assessment	
		(d) Outcome measures on the patient	
Plan of Care	418.58		
A written plan of care must be established and maintained for each individual admitted to a hospice program and the care provided to an individual must be in accordance with the plan.		Interdisciplinary Group Care Planning and Coordination of Services.	418.56
(a) Plan established by attending physician, medical director or physician designee and interdisciplinary group prior to providing care.		Interdisciplinary Group Care planning and Coordination of Service.	418.56(b)
(b) Plan reviewed, updated, and documented at specified intervals by attending physician, medical director or physician designee and the interdisciplinary group.		Interdisciplinary Group Care Planning and Coordination of Services.	418.56(d)
(c) Plan includes assessment of needs and identification of services. It state in the scope and frequency of services needed.		Interdisciplinary Group Care Planning and Coordination of Services.	418.56(c)
Continuation of care: No discontinuation or diminishment of care due to the Medicare beneficiary's inability to pay for that care.	418.60	Organization and Administration of Services.	418.100(d)
Informed Consent: The Informed consent form specifies the type of care and services that may be provided during the course of the illness, and it must be completed for every individual, either from the individual or representative as defined in 418.3.	418.62	Patient Rights	418.52(a)
Inservice training: A hospice must provide an ongoing program for the training of its employees.	418.64	Organization and Administration of services.	418.100(g)
Quality assurance: A hospice must conduct an ongoing, comprehensive, intetrated, self-assessment of the quality and appropriateness of all care provided. The findings are used to correct problems and revise hospice policies. Those responsible for the quality assurance program must.	418.66	Quality Assessment and performance Improvement.	418.60
(a) Implement and report on activities and mechanisms for monitoring the quality of patient care.		Quality Assessment and performance Improvement.	418.60(d)
(b) Identify and resolve problems		Deleted.	
(c) Make suggesitons for improving patient care		Quality Assessment performance Improvement.	418.60(c)(3)
Interdisciplinary group: The hospice must designate an interdisciplinary group(s) composed of individuals who provide or supervise care and services offered by the hospice.	418.68	IDG Group Care Planning and Coordination of Services.	418.56(a)
(a) The interdisciplinary group(s) must include certain specialists.		IDG Care Planning and Coordination of Services	418.56(a)
(b) The interdisciplinary group is responsible for—			
(1) Participation in the establishment of the plan of care		IDG Care Planning and Coordination of Services.	418.56(b)
(2) Provision of supervision of hospice care and services		IDG Care Planning and Coordination of Services.	418.56(a)(1)(3)
(3) Periodic review and updating of the plan of care for each individual receiving hospice care; and.		IDG Care Planning and Coordination of Services.	418.56(d)
(4) Establishment of policies governing the day-to-day provision of hospice care and services.		IDG Care Planning and Coordination of Services.	418.56(a)(2)
Only one interdisciplinary group chosen in advance may execute the functions described in the paragraph (b)(4) of this section.		Deleted.	
(d) Designating a registered nurse to coordinate the implementation of the plan of care for each patient.		IDG Care Planning and Coordination of Services.	418.56(a)(1)
Volunteers: The hospice in accordance with the numerical standards, specified in paragraph (e) of this section, uses volunteers, in defined roles, under the supervision of a designated hospice employee.	418.70	Volunteers	418.78
(a) The hospice must provide appropriate orientation and training.		Volunteers	418.78(a)
(b) Volunteers must be used in direct patient care or administrative roles.		Volunteers	418.78(b)

DERIVATION TABLE—Continued

Current conditions (Part 418, subpart C, D, E)	Citation existing section	Proposed condition	Citation
(c) The hospice must document active and ongoing efforts to recruit and retain volunteers.	.....	Volunteers	418.78(c)
(d) The hospice must document the cost savings achieved through volunteer use. Documentation must include— (1) Necessary positions which are occupied by volunteers. (2) The work time spent by volunteers occupying those positions; and (3) Estimates of the dollar costs of paying employees to occupy the positions identified in (d)(1) for the time specified in (d)(2).	.....	Volunteers	418.78(d)
(e) Volunteer staff providing direct patient care and administrative support must equal at least 5 percent of the total patient care hours of all paid hospice employees and contract staff. Any expansion of care and services achieved by using volunteers, including the type of services and time worked, must be recorded.	.....	Volunteers	418.78(e)
(f) Reasonable efforts made to arrange for visits of members of religious organizations to patients who request such visits and must advise patients of this opportunity.	.....	Deleted.	
Licensure: The hospice and all its employees must be licensed in accordance with applicable Federal, State, and local laws and regulations.	418.72	Compliance with Federal, State & local laws & regulations related to health & safety of patients.	418.116
(a) The hospice must be licensed if State or local law provides for licensure.	.....	Personnel Qualifications for Skilled Professionals; and Compliance with Federal, State & local laws & regulations related to health & safety of patients.	418.114 and 418.116(a)
(b) Employees who provide services must be licensed, certified or registered in accordance with applicable Federal or State laws.			
Central Clinical Records: Establishment and maintenance of a clinical record for every patient. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval.	418.74	Clinical Records	418.104
(a) Clinical record is comprehensive. Entries are made and signed for all services provided whether furnished directly or under arrangements made by the hospice. Each individual's record contains—.	.....	Clinical Records	418.104(a)
(1) Initial and subsequent assessments	.....	Clinical Records	418.104(a)(1)
(2) Plan of care	.....	Clinical Records	418.104(a)(1)
(3) Identification data	.....	Deleted.	
(4) Consent and authorization and election forms	.....	Clinical Records	418.104(a)(2)
(5) Pertinent medical history	.....	Deleted.	
(6) Complete documentation of all services and events	.....	Clinical Records	418.104(a)(1)
(b) Protection of information. The hospice must safeguard the clinical record against loss, destruction, and unauthorized use.	.....	Clinical Records	418.104(c)
Subpart D—Condition of Participation: Core Services:			
Furnishing of Core Services: Hospice employees must routinely provide all core services. Contracted staff may supplement hospice employees to meet patient needs during peak periods or under extraordinary circumstances. The hospice must maintain professional, financial, and administrative responsibility for contracted services and must assure that the qualifications of staff and services provided meet specified requirements. See exception in 418.83.	418.80	Core services	418.64
Nursing services: Nursing care and services provided by or under the supervision of a registered nurse.	418.82	Core services	418.64(b)
(a) The nursing needs of the patients must be met	.....	Core services	418.64(b)
(b) Patient care responsibility of nursing personnel must be specified.	.....	Deleted.	
(c) Services are provided in accordance with recognized standards of practice.	.....	Core services	418.66
Waiver of all requirements that substantially all nursing services be routinely services be routinely provided directly by a hospice.	418.83	Nursing service waver (re-codified).	418.66
(a) Waiver if located in non-urbanized area, operational on or before January 1, 1983, and good faith effort made to fulfill staffing needs.			

DERIVATION TABLE—Continued

Current conditions (Part 418, subpart C, D, E)	Citation existing section	Proposed condition	Citation
(b) Any waiver request is deemed to be granted unless it is denied within 60 days after it is received.			
(c) Waivers will remain effective for one year at a time.			
(d) HCFAa may approve a maximum of two one-year extensions for each initial waiver.			
Medical social services: Medical social services must be provided by a qualified social worker, under the direction of a physician.	418.84	Core services	418.64(c)
Physician services: In addition to palliation and management of terminal illness and related conditions, physician employees of the hospice must also meet the general medical needs of the patient.	418.86	Core services	418.64(a)
Counseling services: Counseling services, including bereavement, dietary, and spiritual counseling, must be available to both the individual and the family.	418.88	Core services	418.64(d)
(a) Organized program for the provision of bereavement services under the supervision of a qualified professional. A special coverage is specified in 418.204(c).		Core services	418.64(d)(1)
(b) Provision of dietary counseling		Core services	418.64(d)(2)
(c) Spiritual counseling must include notice to patients as to the availability of the clergy as provided in 418.70(f).		Core services	418.64(d)(3)
(d) Counseling may be provided by others		Deleted.	
Subpart E—Condition of Participation: Other services:			
Furnishing other services: The services described in this subpart must be provided directly by hospice employees or under arrangements made by the hospice as specified in 418.56.	418.90	Furnishing of non core services	418.70
Physical therapy, occupational therapy and speech language pathology.	418.92(a)		418.70, 418.72
(a) Physical therapy, occupational therapy, and speech-language pathology services must be available and provided under acceptable standards of practice.		Physical therapy, occupational therapy and speech language pathology and dietary counseling, Non-core services.	418.70, 418.72
(b)(1) Laboratory testing services must be in compliance with all applicable requirements of part 493 of this chapter.		Compliance with Federal, State & local laws & regulations related to the health & safety of patients.	418.116(c)(1)
(2) All referral laboratories must be certified in the appropriate specialties and subspecialties of services. See part 493 of this chapter.		Compliance with Federal, State & local laws & regulations & related to the health & safety of patients.	418.116(c)(2)
Home health aide and homemaker service: Home health aide and homemaker must be services available and adequate in frequency to meet the needs of the patients. A home health aide is a person who meets the training, attitude and skill requirements specified in 484.36 of this chapter.	418.94	Home Health Aide and homemaker services.	418.76
(a) Standard: A registered nurse visits the home site at least every two weeks when aide services arebeing provided, and conducts an assessment of the aide services.		Home health aide and homemaker services (revised).	418.76(h)(1)
(b) Standard: A registered nurse prepares written instructions for patient care. Duties include, but may not be limited to, the duties specified in 484.36(c) of this chapter.		Home health aide and homemaker services.	418.76(g)(1)
Medical supplies: Medical supplies, appliances, drugs and biologicals must be provided for the palliation and management of the terminal illness and related conditions.	418.96	Drugs, controlled drugs, and biologicals, medical supplies and durable medical equipment.	418.106
(a) All drugs and biologicals must be administered in accordance with accepted standards of practice.		Drugs, controlled drugs, and biologicals, medical supplies and durable medical equipment.	418.106(a)
(b) The hospice must have a policy for the disposal of extraneous controlled drugs maintained in the patient's home.		Drugs, controlled drugs, and biologicals, medical supplies and durable medical equipment.	418.106(b)
(c) Only certain individuals may administer drugs and biologicals.		Deleted.	
Short term inpatient care: Inpatient care must be available for pain control, symptom management and respite purposes, and must be provided in a participating Medicare or Medicaid facility.		Short term inpatient care	418.108
(a) Inpatient care for pain control and symptom management must be provided in one of the following:		Short term inpatient care	418.108(a)

DERIVATION TABLE—Continued

Current conditions (Part 418, subpart C, D, E)	Citation existing section	Proposed condition	Citation
(1) A hospice that meets the standards for providing inpatient care directly specified in 418.100.	.....	Short term inpatient care	418.108(a)(1)
(2) A hospice or skilled nursing facility that also meets the standards of 418.100(a) and (e).	.....	Short term inpatient care	418.108(a)(2)
(b) Inpatient care for respite purposes must be provided by: ...	.....	Short term inpatient care	418.108(b)
(1) A provider specified in paragraph (a) of this section	.....	Short term inpatient care	418.108(b)(1)
(2) An intermediate care facility (ICF) meeting the standards in 418.100 (a) and (e).	.....	Short term inpatient care (delete ICF and replace with nursing facility (NF)).	418.108(b)(2)
(c) Inpatient care for Medicare beneficiaries may not exceed 20 percent of the total number of days for this beneficiary group.	.....	Short term inpatient care	418.108(d)
(d) Exemption from limitation in paragraph (c)	.....	Short term inpatient care	418.108(e)
Hospices that provide inpatient care directly: A hospice that provides inpatient care directly must comply with all of the following standards.	418.100	Hospices that provide inpatient care directly.	418.110
(a) Twenty-four hour nursing services:			
(1) The facility provides 24-hour nursing services in accordance with patient plan of care sufficient to meet total nursing needs.	.....	Hospices that provide inpatient care directly.	418.110(b)
(2) Each shift includes a direct care registered nurse	.....	Deleted.	
(b) The hospice has an acceptable written plan, periodically rehearsed with staff, with internal and external disaster procedures.	.....	Hospices that provide inpatient care directly.	418.110(c)(1)(iii)
(c) The hospice must meet all Federal, State and local laws, regulations, and codes pertaining to health and safety.	.....	Compliance with Federal, State & local laws and regulations related to health and safety of patients.	418.116
(d) Fire protection	.....	Hospices that provide inpatient care directly.	418.110(d)(1)
(1) Hospices must comply with the 1985 edition of the Life Safety Code of the NFPA. See exceptions in (d)(2) and (3).			
(2) Waiver for specific provisions of Life Safety Code.			
(3) 1981 edition compliance by May 9, 1988 will be considered as meeting this standard.			
(4) Restrictions on facilities of two or more stories not of fire resistive construction.			
(e) Patient areas.	.....	Hospices that provide inpatient care directly.	418.110(e)
(1) Design and equipment of patient/family areas.			
(2) Specifications for patient/family accommodations			
(3) Visitor specifications.			
(f) Patient rooms and toilet facilities.	.....	Hospices that provide inpatient care directly.	418.110(f)
(1) Specifications for equipment, size, and location of patient rooms and toilet.			
(2) Waiver of space and occupancy requirements for unreasonable hardships.			
(g) Requirements for bathroom facilities	.....	Hospices that provide inpatient care directly.	418.110(g), 418.110(h)
(h) Requirements for linens	.....	Hospices that provide inpatient care directly.	418.110(k)
(i) Isolating areas for patients with infectious diseases	.....	Hospices that provide inpatient care directly.	418.110(j), 418.110(i)
(j) Meal service and menu planning	.....	Hospices that provide inpatient care directly.	418.110(l)
(1) Three meals a day served at regular times; no more than 14 hours between substantial evening meal and breakfast.	418.100	Deleted.	
(2) Procure, store, prepare, distribute, and serve all food under sanitary conditions.	.....	Deleted.	
(3) Have a staff member trained or experienced in food management or nutrition.			
(4) A professionally qualified dietitian must plan and supervise a menu for patients requiring special diets.			
(k) Pharmaceutical services. The hospice provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals.	.....	Hospices that provide inpatient care directly.	418.110(m)

DERIVATION TABLE—Continued

Current conditions (Part 418, subpart C, D, E)	Citation existing section	Proposed condition	Citation
(1) Licensed pharmacist The hospice must—	.....	Hospices that provide inpatient care.	418.110(n)
(i) employ a licensed pharmacist; or			
(ii) have a formal agreement with a licensed pharmacist to advise the hospice on ordering, storage, administration, disposal and record keeping of drugs and biologicals.			
(2) Orders for medications.	.....	Hospices that provide inpatient care directly.	418.110(n)
(i) Physician orders all patient medications.			
(ii) Verbal medication order:			
(A) Only given to a registered nurse, pharmacist, or physician.			
(B) the individual receiving the order must record and sign it immediately and have the prescribing physician sign it in a manner consistent with good medical practice.			
(3) Medications are administered only by one of the individuals specified.			
(4) The pharmaceutical service has procedures for control and accountability of all drugs and biological throughout the facility, including record keeping and reconciliation procedures.			
(5) The labeling of drugs and biologicals is based on currently accepted professional principles, and includes the appropriate accessory and cautionary instructions, as well as the expiration date when applicable.			
(6) All drugs and biologicals are stored and locked in compartments under proper temperature controls and only authorized personnel have access to the keys. Separately locked compartments are provided for schedule II and other drugs subject to abuse, except under single unit package drug distribution systems. An emergency medication kit is kept readily available.			
(7) Extraneous controlled drugs are disposed of in compliance with State requirements. When none apply, the pharmacist and a registered nurse must dispose of the drugs and prepare a record of the disposal.			
	NEW	Hospices that provide inpatient care directly: Seclusion and Restraint.	418.110(o)
	NEW	Waiver of Physical therapy, occupational therapy and speech language pathology and dietary counseling.	418.74
	NEW	*Hospices that provide hospices care to residents of a SNF/NF, ICF/MR or other facility* In addition to meeting the conditions of participation at 418.10 through 418.116, a hospice that provides hospice care to residents of a SNF/NF, ICF/MR, or other residential facility abide by the following additional standards.	418.112
		(a) Standard: Resident eligibility, election, and duration of benefits.	418.112(a)
		(b) Standard: Professional management.	418.112(b)
		(c) Standard: Core services	418.112(c)
		(d) Standard: Medical director	418.112(d)
		(e) Standard: Written agreement	418.112(e)
		(f) Standard: Hospice plan of care.	418.112(f)
		(g) Standard: Coordination of services.	418.112(g)
		(h) Standard: Transfer, revocation, or discharge from hospice.	418.112(h)

DERIVATION TABLE—Continued

Current conditions (Part 418, subpart C, D, E)	Citation existing section	Proposed condition	Citation
		(i) Standard: Orientation and training of staff.	418.112(i)
	NEW	*Personnel qualifications*	418.114
		(a) General qualification requirements.	418.114(a)
		(b) Federally defined qualifications.	418.114(b)
		(c) Personnel qualifications when no States licensing laws, certification or registration requirements exist.	418.114(c)
		Criminal background checks	418.114(d)
	NEW	*Compliance with Federal, State, & local laws and regulations related to health and safety of patients* The hospice and its staff must operate and furnish services in compliance with all applicable Federal, State, & local laws & regulations related to the health & safety of patients. If State and local law provides for licensing of hospices, the hospice must be licensed.	418.116
		(a) Standard: Licensure of staff ..	418.116(a)
		(b) Standard: Multiple locations ..	418.116(b)
		(c) Standard: Laboratory services	418.116(c)

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the information collection requirements discussed below. The following information collection requirements in this proposed rule and the associated burdens are subject to PRA.

Section 418.52 Condition of Participation: Patient's Rights

Paragraph (a) of this section would require that the hospice provide each patient with: a verbal and written notice of the patient's rights and responsibilities during the initial evaluation visit, in advance of furnishing care; written information concerning its policies on advance directives, including a description of applicable State law; and written or verbal information regarding the hospice's drug policies and procedures, including the tracking and disposing of controlled substances. The hospice would also be required to maintain documentation showing that it complied with the requirements of this section and that the patient or representative demonstrated an understanding of these rights.

The burden associated with these requirements would be the time associated with disclosing the information and documenting that the hospice did disclose the information. We estimate that this would take approximately 5 minutes per patient or 24.58 hours per hospice, for an annual total of 59,417 hours.

Paragraph (b) of this section would require a hospice to document a patient/representative complaint, and the steps taken by the hospice to resolve it.

The burden associated with this requirement would be the time it took to document the necessary aspects of the issues. We anticipate 15 complaints per year per hospice and 15 minutes to document the complaint and resolution activities, for a total of 9,045 hours annually.

Paragraph (e) of this section would require the patient to be informed of the extent to which payment may be expected from the patient, Medicare or Medicaid, third-party payers, or other resources of funding known to the hospice, verbally and in writing, and in a language that he or she can understand, before care is initiated. The burden associated with this requirement would be the time it would take to notify patients. We estimate that it would take no more than 5 minutes per patient, for a total of 24.58 hours per hospice and 59,417 hours nationally.

Section 418.54 Condition of Participation: Comprehensive Assessment of the Patient

This section would require each hospice to conduct and document in writing a comprehensive patient-specific assessment, and maintain documentation of the assessment and any updates.

The burden associated with this requirement would be the time it would

take to record the assessment and any changes/updates to it. We believe that documenting a patient assessment is a usual and customary business practice and as such the burden is not subject to the PRA.

Section 418.56 Condition of Participation: Interdisciplinary Group Care Planning and Coordination of Services

This section would require all hospice care and services furnished to patients and their families to follow a written plan of care established by the hospice interdisciplinary group in collaboration with the attending physician. The hospice would be required to ensure that each patient/family and primary caregiver(s) receive education and training provided by the hospice as appropriate to the care and services identified in the plan of care. The section would specify the minimum elements the plan of care must include.

In addition, the medical director or physician designee and the hospice interdisciplinary team, in collaboration with the individual's attending physician, would be required to review, revise and document the plan as necessary at intervals specified in the plan, but no less than every 14 calendar days. A revised plan of care would have to include information from the patient's updated comprehensive assessment, and would have to document the patient's progress toward the outcomes specified in the plan of care.

These requirements are subject to the PRA; however, they are currently approved under OMB control number 0938–0302 with a current expiration date of September 30, 2006.

The burden associated with these requirements would be the time it would take to document the plan of care (10 minutes) and any revisions to it (15 minutes) in the clinical record. We estimate that it would take 25 minutes to comply with these requirements per patient, for a total of 123 hours on average per hospice, and 297,083 hours nationally.

Section 418.58 Condition of Participation: Quality Assessment and Performance Improvement

This section would require a hospice to develop, implement, and maintain an effective ongoing hospice-wide data-driven quality assessment and performance improvement (QAPI) program. The hospice's governing body would have to ensure that the program reflected the complexity of its organization and services; involved all hospice services, including those services furnished under contract or arrangement; focused on indicators related to improved palliative outcomes and end-of-life support services provided; and took actions to demonstrate improvement in hospice performance. The hospice would be required to maintain and demonstrate evidence of its quality assessment and performance improvement program and be able to demonstrate its operation to the CMS.

The hospice would be required to take actions aimed at performance improvement and, after implementing those actions, the hospice must measure its success and track its performance to ensure that improvements were sustained.

The hospice would be required to document what quality improvement projects were being conducted, the reasons for conducting these projects, and the measurable progress achieved on these projects.

The burden associated with this requirement would be the time it would take to document the development of the quality assessment and performance improvement and associated activities. We estimate that it would take each hospice an average of 24 hours per year to comply with these requirements for a total of 57,888 hours annually.

Section 418.60 Condition of Participation: Infection Control

The hospice would be required to maintain and document a coordinated infection control program that protected patients, families and hospice personnel by preventing and controlling infections and communicable diseases.

The burden associated with this requirement would be the time it would take to document the program. We believe that this proposed requirement reflects usual and customary medical and business practice; thus the burden is not subject to the PRA.

Section 418.64 Condition of Participation: Core Services

We are proposing that a hospice could choose to enter into an arrangement with another hospice to obtain personnel to furnish core hospice services under certain circumstances. Such an arrangement would have to be supported by a legally binding written agreement. The burden associated with this requirement would be the time required to negotiate, draft and sign an agreement. We believe that this requirement is a customary and usual business practice. Thus, the burden would not be subject to the PRA.

Under the nursing services standard for this condition, the hospice could enter into a written agreement for the provision of certain nursing services by an outside body. The burden associated with this requirement would be the time required to negotiate, draft and sign an agreement. We believe that this requirement is a customary and usual business practice. Thus, the burden would not be subject to the PRA.

Under the counseling standard for this condition, the hospice would be required to advise the patient/family that the hospice would facilitate visits by local clergy, pastoral counselor, or other individuals who could support the patient's spiritual needs. We believe that this requirement is a customary and usual hospice practice, and is therefore not subject to the PRA.

Section 418.66 Condition of Participation: Nursing Services Waiver of Requirement That Substantially all Nursing Services Be Routinely Provided Directly by a Hospice

Under this section, if a hospice wanted a waiver from the requirement that substantially all nursing services be routinely provided by the hospice, it would be required to provide evidence that it made a good faith effort to hire a sufficient number of nurses to provide services. To extend the waiver, the hospice would be required to submit a request to CMS attesting that the conditions under which it originally requested the initial waiver had not changed since the initial waiver was granted.

The burden associated with this requirement would be the time it would take to provide the necessary documentation, and the time it would take to request an extension. We estimate that there will be no more than 5 hospices providing the information and requesting extensions. Under section 1320.3, this requirement would not be subject to the PRA as it would affect fewer than 10 entities.

Section 418.74 Condition of Participation: Waiver of Requirement-Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Dietary Counseling

A hospice located in a non-urbanized area would be able to submit a written request for a waiver of the requirement that the hospice directly provide physical therapy, occupational therapy, speech-language pathology, and dietary counseling services. The hospice would be able to seek a waiver of the requirement that it make physical therapy, occupational therapy, speech-language pathology, and dietary counseling services (as needed) available on a 24-hour basis. The

hospice would also be able to seek a waiver of the requirement that it provide dietary counseling directly. The hospice would have to provide evidence that it had made a good faith effort to meet the requirements for these services before it sought such a waiver. To extend the waiver, the hospice would be required to submit a request to CMS recertifying that the conditions under which it originally requested the initial waiver had not changed since the initial waiver was granted.

The burden associated with this requirement would be the time it would take to provide the necessary documentation and the time it would take to request an extension. We estimate that there would be no more than 5 hospices providing the information and requesting extensions. Under section 1320.3, this requirement would not be subject to the PRA, since it would affect fewer than 10 entities.

Section 418.76 Condition of Participation: Home Health Aide and Homemaker Services

Under this section, the hospice would be required to maintain documentation that it met the requirements of the standard concerning the content and duration of home health aide classroom and supervised practical training, competency evaluation, and in-service training.

We estimate that it would take approximately 5 minutes per home health aide to document meeting this standard and that 2,412 home health aides would be trained each year nationally, for a total of 201 hours annually.

Under this section, written patient care instructions would have to be prepared by a registered nurse or other licensed professional.

We believe that this requirement reflects a usual and customary business practice and the burden would not be subject to the PRA.

Home health aides would be required to report changes in the patient's medical, nursing, rehabilitative, and social needs to a registered nurse or other appropriate licensed professional, and complete appropriate records in compliance with the hospice's policies and procedures. In addition, as members of the interdisciplinary team, home health aides would be required to report any change in a patient's condition as the change related to the plan of care and quality assessment and performance improvement activities.

Under this section as well, homemakers would be required to report all concerns about the patient or family to the member of the interdisciplinary group who was coordinating homemaker services.

We believe that reporting and documenting this is a usual and customary business practice and, as such, the burden would not be subject to the PRA.

Section 418.78 Conditions of Participation—Volunteers

Under this section, the hospice would be required to maintain, document and provide volunteer orientation and training that was consistent with hospice industry standards.

We estimate that on average a hospice would provide orientation and training 6 times per year and that it would take no more than five minutes to document each orientation session, for a total of 30 minutes per year, and a national total of 1,206 hours.

Under this section, the hospice would be required to document savings achieved through the use of volunteers.

We estimate that this activity would take approximately 3 hours per hospice per year, or 7,236 hours nationally.

The hospice would also be required to record examples of patient care tasks and administrative services performed by volunteers, including the type of services and time worked.

We estimate that recording these examples would take approximately 600 hours per year per hospice, or 1,447,200 hours nationally.

Section 418.100 Condition of Participation: Organization and Administration of Services

Under paragraph (e) of this section, arranged services would be required to be supported by written agreements that would have to require specified activities.

Written agreements are a necessary part of usual and customary business practice; thus, the burden would be exempt from the PRA under section 1320.3(b)(2).

Under paragraph (g), the hospice would be required to have written policies and procedures describing its method(s) of assessing competency and would be required to maintain a written description of the in-service training provided during the previous 12 months.

Written policies and procedures are a necessary part of usual and customary business practice; thus, we believe that the burden would be exempt from the PRA under section 1320.3(b)(2).

Section 418.102 Condition of Participation: Medical Director

This section would require the medical director or physician designee to review the clinical information for each hospice patient and provide written certification that it was anticipated that the patient's life expectancy was 6 months or less if the illness were to run its normal course.

The burden associated with this would be the review time and the written certification. We estimate that it would take approximately 10 minutes per patient, for a total of 49 hours per hospice annually and 118,833 nationally.

Section 418.104 Condition of Participation: Clinical Records

Under this section the hospice would be required to maintain on each patient a clinical record that contained accurate clinical information and was available to the patient's attending physician and hospice staff.

The burden associated with this requirement would be the time it would take to maintain a record on each patient. We believe that the requirement reflects usual and customary medical practices and, as such, the burden would not be subject to the PRA.

Paragraph (e) of this section would require that, if the care of a patient were transferred to another Medicare/Medicaid-approved facility, the hospice would be required to forward a copy of the patient's clinical record and the hospice discharge summary to that facility. If a patient revoked the election of hospice care, or was discharged from hospice because eligibility criteria were no longer met, the hospice would have to provide a copy of the clinical record and the hospice discharge summary of this section to the patient's attending physician.

The burden associated with this requirement would be the time it took to forward the clinical record and discharge summary. This is a usual and customary business practice, and as such the burden would not be subject to the PRA.

Section 418.106 Condition of Participation: Drugs, Controlled Drugs and Biologicals, Medical Supplies, and Durable Medical Equipment

Under paragraph (b), the hospice would be required to have a written policy for tracking, collecting, and disposing of controlled drugs maintained in the patient's home.

The burden associated with this requirement would be the time it would require to put the policy in writing. Written policies are a necessary part of usual and customary business practice; thus, we believe that the burden would be exempt from the PRA under section 1320.3(b)(2).

Under paragraph (b) of this section, during the initial hospice assessment, the use and disposal of controlled substances would be required to be discussed with the patient and family to ensure the patient and family were educated regarding the use and potential danger of controlled substances. The hospice nurse would be required to document that the policy was discussed with the patient and family.

We anticipate that the discussion and documentation of the discussion would take approximately 5 minutes per patient, and 24.58 hours per hospice, for a total of 59,417 hours annually for all patients.

Under paragraph (c) of this section, if, for a piece of equipment, there were no manufacturer recommendations for repair and routine maintenance, the hospice would be required to develop in writing its own repair and routine maintenance policy.

The burden associated with this requirement would be the time required to put the policy in writing. Written policies are a necessary part of usual and customary business practice; thus, we believe that the burden would be exempt from the PRA under section 1320.3(b)(2).

Section 418.108 Condition of Participation—Short-Term Inpatient Care

If the hospice had an arrangement with a facility to provide for short-term inpatient care, the arrangement would have to be described in a legally binding written agreement that at a minimum contained specified elements.

The burden associated with this requirement would be the time it took to negotiate, draft, and sign the agreement. Having written agreements is a usual and customary business practice and, as such, we believe that the burden would not be subject to the PRA.

Section 418.110 Condition of Participation: Hospices That Provide Inpatient Care Directly

Under paragraph (c)(1)(i) of this section, we would require a hospice to report breaches of safety and equipment failures to the appropriate State and local bodies having regulatory jurisdiction.

The reporting burden associated with this requirement would be the time required to report such safety and equipment breaches. We estimate that there would be approximately 110 safety and equipment breaches annually nationwide. Filing a report regarding these events would take approximately 30 minutes per event for a total of 55 hours annually nationwide.

Under paragraph (c)(1)(iii) of this section, the hospice would be required to have a written disaster preparedness plan in effect for managing the consequences of power failures, natural disasters, and other emergencies that might affect the hospice's ability to provide care.

The burden associated with this requirement would be the time it took to write the disaster preparedness plan. We believe that hospices will each spend 1 hour developing a disaster plan for a total of 2,412 hours on a one time basis.

Under paragraph (m) of this section, under the direction of a qualified pharmacist, the hospice would be required to provide pharmaceutical services such as drugs and biologicals and have a written protocol in place that would ensure dispensing accuracy.

The burden associated with this requirement would be the time it took to devise and write down the protocol. We believe that having such a protocol in writing is a usual and customary business practice, and, as such, we believe that the burden would be exempt from the PRA.

Paragraph (n) of this section would require a physician to order all medications for a patient; all drugs and biologicals to be labeled in accordance with accepted professional practice, containing specified information; and would require the hospice to keep current and accurate records of the receipt and disposition of all controlled drugs. Any discrepancies in the acquisition, storage, use, disposal, or return of controlled drugs would have to be investigated immediately by the pharmacist and hospice administrator and, where required, reported to the appropriate State agency; a written account of the investigation would be required to be made available to State and Federal officials.

The burden associated with these requirements would be the time required to (1) document orders, label drugs, and maintain current and accurate records of the receipt and disposition of all controlled drugs; and (2) document, investigate, and report drug discrepancies. We believe that the first requirement, concerning ongoing documentation, reflects customary and usual medical and business practices and the burden would therefore be exempt under the PRA. For the documentation, investigation and reporting of drug discrepancies, we estimate that there are 55 events annually that would require such documentation, and that each event would require one hour of labor to meet the proposed requirements for a total of 55 hours nationally annually.

Paragraph (o) of this section would require orders for a physical restraint or seclusion to be written, and that physical restraint or seclusion be supported by a documented order and the patient's response or outcome and documented in the patient's clinical record. In addition, the hospice must report any death that occurs while the patient is restrained or in seclusion.

We estimate that there would be approximately 7,130 incidents of physical restraint or seclusion and that it would take approximately 4 minutes to write the orders and to document the incident, for an annual national total of 475 hours. Additionally, it would take six hours for a hospice to develop a customized pre-printed seclusion and restraint order, totaling 14,472 hours nationwide on a one-time basis.

We have no concrete estimate of the number of deaths that would occur per year that occurred while the patient was restrained or secluded. We believe that the number of deaths is less than 10 per year, and we would expect that number to decrease as hospices implement the proposed new seclusion and restraint requirements. Therefore, under section 1320.3, this requirement is not subject to the PRA, as it would affect fewer than 10 entities.

Section 418.112 Condition of Participation: Hospices That Provide Hospice Care to Residents of a SNF/NF, ICF/MR, or Other Facility

Paragraph (e) of this section would require the hospice and the other facility to have a written agreement that would specify the terms under which the hospice would provide hospice services in the facility, and would require the agreement to be signed by authorized representatives of the hospice and the facility, before the hospice could provide such hospice services. The written agreement would have to include specified information and documents.

The burden associated with this requirement would be the time required to draft and sign an agreement and to gather the information to be sent on each patient. Both of these requirements can be considered customary and usual medical and business practices. Thus, the burden would not be subject to the PRA.

Paragraph (f) of this section would require a written plan of care to be established and maintained for each facility patient, developed by and coordinated with the hospice interdisciplinary group in consultation

with facility representatives, and in collaboration with the individual's attending physician. The plan of care would be required to include specified information.

This proposed burden is included with the burden discussed under section 418.56.

Under paragraph (g) of this section we would require a hospice to provide the facility with the following information specified in this paragraph.

The burden associated with this requirement would be the time required by staff to compile the information. However, we believe that such information compilation is a usual and customary medical and business practice. Thus, the burden would not be subject to the PRA.

Section 418.114 Condition of Participation: Personnel Qualifications for Skilled Professionals

Paragraph (d) of this section would require each hospice to obtain a criminal background check on each employee, including but not limited to those employees who have hands-on patient contact, those who are employed in an administrative or maintenance capacity, those who are volunteers, and those who provide services under contract. The background check would be required to be obtained before the hospice would employ that person.

In 2002, 39 states required criminal background checks for hospice employees. In these states approximately 70,395 hospice employees have already received a criminal background check, thus greatly reducing the overall burden. We estimate that hospices that have not previously performed background checks, accounting for 19,876 hospice employees, would each obtain 39 criminal background checks initially. Each background check request form would take 6 minutes to prepare and send, for a total of 4 hours per hospice the first year. For each year thereafter all hospices would complete background checks on approximately 8 new employees per year for a total of 48 minutes per hospice per year and 1,852 hours nationally per year.

The total burden of these requirements would be 2,117,529 hours annually and 16,888 hours on a one-time basis.

To comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: William Parham, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, CMS Desk Officer, (CMS–3844–P), *Christopher_Martin@omb.eop.gov.* Fax: (202) 395–6974.

VI. Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($110 million or more in any 1 year). This is not a major rule, since the overall economic impact for all proposed new Conditions of Participation is estimated to be $13.7 million annually.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Individuals and States are not included in the definition of a small entity. For purposes of the RFA, most hospices (approximately 73% of Medicare certified facilities) are considered to be small entities, either by virtue of their nonprofit or government status or by having revenues of $6 million to $29 million in any one year (for details, see the Small Business Administration's regulation that sets forth size standards for health care industries at 65 FR 69432). We estimate there are approximately 2,412 hospices with average admissions of approximately 295 patients per hospice (based on the number of patients in 2003 divided by the number of hospices in 2003). The National Hospice and Palliative Care Organization estimates that 79 percent of hospice patients are Medicare beneficiaries, thus we have not considered other sources of revenue in this analysis.

We certify that this rule would not have a significant impact on a substantial number of small entities because the cost of this rule is less than 1 percent of total hospice Medicare revenue. According to the CMS 2003 national expenditure data, Medicare paid $5.7 billion to providers for hospice care in 2003. We estimate this rule will cost hospices approximately $16.9 million or approximately $7,389 per statistically average hospice annually.

We understand that there are different sizes of hospices and that the burden for hospices of different sizes will vary. Therefore, we have assessed the burden for hospices that are smaller than the statistically average hospice used for calculations in part B of this section, Anticipated effects on hospices. The smaller hospices have been broken up into three categories based on the number of routine home care days, the most common level of hospice care provided. The categories are: group 1 hospices providing 0 to 1,754 routine home care days; group 2 hospices providing 1,755 to 4,373 routine home care days; and group 3 hospices providing 4,374 to 9,681 routine home care days. Group 1 hospices, averaging 23 patients per year, would spend approximately $1,845 to comply with the proposed regulations. The average hospice in this group received $101,181 from Medicare for routine home care days under the 2002 hospice payment rates. Group 2 hospices, averaging 77 patients per year would spend approximately $2,936 to comply with the proposed regulations. The average hospice in this group received $325,533 from Medicare for routine home care days under the 2002 rates. Group 3 hospices, averaging 173 patients per year, will spend approximately $4,889 to comply with the proposed regulations. The average hospice in this group received $767,550 from Medicare for routine home care days under the 2002 rates.

The time and cost burden for these providers is significantly less than that of the statistically average hospice used in part B of this section because the majority of the burden imposed by the proposed regulations is directly tied to patient care and the staff necessary to provide care. Therefore, a reduced patient census leads to reduced burden. These figures do not, however, adjust the estimated quality assessment and performance improvement burden

described in part B of this section. We estimate that the financial burden for group 1 hospices would be 1.75 percent of the payment received for routine home care days. For group 2 hospices the financial burden would be less than 1 percent, and for group 3 hospices the financial burden would be less than 0.75 percent of Medicare payments for routine home care days. These percentages do not include amounts paid by Medicare for continuous home care days, respite care days, and regular inpatient care days. The percentages also do not include amounts paid by Medicaid, private insurers, and individual patients, which account for approximately 21 percent of hospice revenue.

In addition, section 1102 (b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. We believe that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals, since there are few hospice programs in those facilities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any proposed rule that may result in an expenditure of $110 million or more in any one year by a State, local, or tribal government, in the aggregate, or by the private sector. This rule has no impact on the expenditures of State, local, or tribal governments, and the impact on the private sector is estimated to be far less than $110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State or local governments, preempts State law, or otherwise has Federalism implications. This rule has no Federalism implications.

B. Anticipated Effects on Hospices

As described in the preamble, this proposed regulation contains both new provisions and provisions that are carried over from the existing hospice regulations. For purposes of this section, we have assessed the impact of the new provisions. The provisions contained in the existing regulations are simply being re-codified and therefore do not present a new burden to hospices.

Within this section, we have made several assumptions and estimates in order to assess the time that it would take for a hospice to comply with the provisions and the associated costs of compliance. We have detailed these assumptions and estimates in the table below. We have also detailed many, but not all, of the standards within each CoP, and have noted whether or not there is an impact for each. However, the requirements contained in many provisions are already standard medical or business practices. These requirements would, therefore, not provide additional burden to hospice providers.

TABLE 1.—ASSUMPTIONS AND ESTIMATES USED THROUGHOUT THE IMPACT ANALYSIS SECTION

Number of Medicare hospices nationwide	2,412
Number of hospice patients nationwide	713,000
Number of patients per average hospice	295
Hourly rate of registered nurse	$27
Hourly rate of office employee	$19
Hourly rate of administrator	$42
Hourly rate of home health aide	$14
Hourly rate of pharmacist	$45
Hourly rate of medical director	$84

Patient Rights (§ 418.52)

The proposed rule would expand on the informed consent section (§ 418.62) of the current rule, recognizing that hospice patients are entitled to certain rights that must be protected and preserved, and that all patients must be able to freely exercise those rights.

(a) Standard: Notice of Rights. A hospice would be required to provide patients or their representatives with written and verbal notice of the patient's rights and responsibilities during the initial evaluation and would have to document this notification as well as document that the patient/representative understands their rights.

A hospice would also be required to inform and distribute written information regarding its policies on advance directives, and it would have to inform the patient, representative, and family of its drug policies and procedures. We estimate that it would take eight hours on a one-time basis for a hospice to develop a patient rights form, at a cost of $336, based on the assumption that an administrator will develop the form. We estimate that it would take approximately five minutes per patient to incorporate this information into the existing informed consent process. At the average hourly rate for a registered nurse, it would cost $2.25 per patient to fulfill the requirement.

- 8 hours × $42 an hour = $336
- $27 hour/60 minutes = $0.45 minute × 5 minutes = $2.25

(b) Standard: Exercise of rights and respect for property and person. A hospice would be required to investigate and document all allegations, unexplained injuries, and misappropriations. It would be required to report such incidents to the hospice administrator and appropriate State and local bodies having jurisdiction, and take action to correct problems once they were identified.

We expect that a hospice administrator would handle the investigations. We estimate that as many as 5% (15) of an average hospice's patients would require a one hour-long investigational session, for a total of 15 hours per hospice. We estimate that hospices will spend, on average, three minutes per patient, at a cost of $2.10 per patient per year to comply with this provision. The cost for the entire hospice industry would be $1,497,300 a year, while the cost for an average hospice would be $619.50 a year.

- 15 hours × 60 minutes = 900 minutes, 900 minutes/295 patients = 3 minutes per patient
- $42 hour/60 minutes = $0.70 per minute x 3 minutes per patient = $2.10 per patient
- $2.10 per patient × 713,000 patients = 1,497,300,
- $2.10 per patient × 295 patients = $619.50

(c) Standard: Pain management and symptom control. There is no burden associated with this standard.

(d) Standard: Confidentiality of clinical records. There is no burden associated with this standard.

(e) Standard: Patient liability. A hospice would be required to inform a patient verbally and in writing about his or her payment liability. Developing a form to notify patients is not a burden because CMS has already developed this form, CMS–R131, Advanced Beneficiary Notice (ABN). Informing the patient verbally and in writing would take five minutes per patient to fulfill, or 24.58 hours per average hospice and 59,417 hours nationwide. The estimated cost would be $2.25 per patient, $663.75 per hospice, and $1,604,250 nationwide.

- 5 minutes per patient × 295 patients = 24.58 hours
- 5 minutes per patient × 713,000 patients = 59,417 hours
- $27 hour/60 minutes = $0.45 minute × 5 minutes = $2.25
- $2.25 per patient × 295 patients = $663.75
- $2.25 per patient × 713,000 patients = $1,604,250

TABLE 2.—PATIENT RIGHTS BURDEN ASSESSMENT

Standard	Time per patient (minutes)	Time per hospice (hours)	Total time (hours)	Cost per patient	Cost per average hospice	Total cost
Notice of rights	5	24.58	59,417	$2.25	$663.75	$1,604,250
Exercise of rights	3	15	34,740	2.10	630	1,408,325
Notice of liability	5	24.58	59,417	2.25	663.75	1,604,250
Totals	13	64.16	153,574	6.60	1,947	4,705,800

Comprehensive Patient Assessment (§ 418.54)

The existing rule (§ 418.58(c)) requires the hospice to assess the patient's needs and to state in detail the scope and frequency of services needed. The proposed rule would go beyond this by specifying the time for completing the assessment, the factors to be included in the assessment, and the time for updating the assessment. However, we do not believe this will add any additional burden, since this section of the proposed rule reflects the contemporary standard practice of hospice programs.

Standard: Content of the comprehensive assessment. The assessment would be required to identify the physical, psychosocial, emotional, and spiritual needs related to the terminal illness. Every assessment would likely include factors such as the patient's physical and nutritional needs, pain status, and psychological state. This differs from the current rule in that it describes what would be included in the plan of care. The factors that are described were identified by the industry and reflect standard industry practice.

Standard: Update of the comprehensive assessment. Updates of the patient's comprehensive assessment would have to be conducted at least every 14 days and at the time of each recertification. The current regulation allows the plan of care to determine the frequency of updates. However, due to the rapidly changing status of hospice patients it is standard practice for hospices to update patient assessments at least every 14 days, and often more frequently; therefore, this proposed new standard is simply codifying current industry practice and should not present a burden.

Standard: Patient outcome measures. The comprehensive assessment would have to include consistent pre-determined data elements that allowed for the measurement of outcomes. (Note: There is no data reporting element.)

We believe this standard would pose a burden on the hospice provider. However, the burden of collecting information related to these outcome measures is calculated as part of a hospice's quality assessment and performance improvement program. If a hospice currently collects data and calculates values for measures that are reported to the NHPCO, it will meet the requirement in the proposed rule.

Interdisciplinary Group, Care Planning and Coordination of Services (§ 418.56)

The proposed rule makes several changes to the existing rule to improve patient care and lessen burden.

(a) Standard: Approach to service and delivery. Unlike the existing requirement that a registered nurse must implement a patient's plan of care, this new rule would allow any qualified member of the interdisciplinary group to implement a patient's plan of care, lessening the burden on hospices and the demand on registered nurses.

(c) Standard: Content of the plan of care. This section goes into further detail about the content of each patient's plan of care than the existing regulation does. The burden of including these items is accounted for in the development of the plan of care, as described in part 2 of this section. The items that would be required under the proposed rule are already included in the standard industry patient plan of care.

(d) Standard: Review of the plan of care. The existing rule states that a patient's plan of care should be reviewed at intervals specified in the initial plan of care. The proposed rule would require that it be reviewed at least every two weeks. We estimate that documenting the update of a patient's plan of care would take five minutes per patient and that each patient's plan of care would be updated 3 times, based on a an average 51 day length of stay (2002 nov., Medicare National Summary for HHA, Hospice, SNF, and outpatient CY 1999–2001). This amounts to 15 minutes per patient, or 73.75 hours per hospice, at a cost of $6.75 per patient for a registered nurse to complete the updates.

- $27 hour/60 minutes = $0.45 minute × 15 minutes = $6.75
- $6.75 per patient × 295 patients = $1,991.25
- $6.75 per patient × 713,000 patients = $4,812,750

TABLE 3.—INTERDISCIPLINARY GROUP, CARE, PLANNING, AND COORDINATION OF SERVICES BURDEN ASSESSMENT

Standard	Time per patient (minutes)	Time per hospice (hours)	Total time (hours)	Cost per patient	Cost per average hospice	Total cost
Update plan of care	15	73.75	178,250	$6.75	$1,991.25	$4,812,750
Totals	15	73.75	178,250	6.75	1,991.25	4,812,750

Quality Assessment and Performance Improvement (§ 418.58)

The current rule requires a hospice to maintain a quality assurance program that involves an ongoing, comprehensive, integrated self-assessment by the hospice of the quality and appropriateness of care (§ 418.66). The proposed rule would provide more guidance to providers and would require approximately 24 hours a year to implement. Many providers are already using comprehensive quality assessment and performance improvement programs for accreditation or

independent improvement purposes, including one designed by the NHPCO. For those providers who choose to develop their own quality assessment and performance improvement program, we estimate that it would take 12 hours to create a program. We also estimate that hospices would spend 4 hours a year collecting and analyzing data. In addition, we estimate that hospices would spend 3 hours a year training their staff and 5 hours a year implementing performance improvement activities. Both the program development and implementation would most likely be managed by that hospice's administration. Based on an administrator's hourly rate, the total cost of the quality assessment and performance improvement condition of participation would be $1,008 per hospice.

- $42 per hour × 24 hours = $1,008

Our hourly burden estimates are based on the proportion of patients to hours that is found in the CMS final rule, Hospital Conditions of Participation: Quality Assessment and Performance Improvement at 68 FR 3435 (January 24, 2003). CMS estimated that a hospital would spend 80 hours collecting and analyzing data on 12 identified measures. According to 2002 CMS statistics, in 2000, 5,985 hospitals discharged 11.8 million patients. This means that the statistically average hospital discharged approximately 2,000 patients that year. Therefore, collecting and analyzing data for 2,000 patients would take 80 hours, for a ratio of 80 hours/2,000 patients (or 4 hours/100 patients). Based on this estimate, for the average 295 patient hospice, we believe that this ratio would be 12 hours/295 patients. However, we do not expect hospices to collect information on 12 measures, as hospitals are required to do. Hospices that collect information in the four suggested areas (self-determination, comfort, safety, and effective grieving) would have one third the burden required to collect the 12 hospital measures, or 4 hours. This ratio methodology is also used to assess the burden in all other quality assessment and performance improvement areas.

(a) Standard: Program scope. Under the existing regulation, hospices must assess the quality and appropriateness of the care they provide. This new standard would expand on the rule by requiring that the existing assessment become a formal quality assessment and performance improvement program that is capable of showing measurable improvement through the use of quality indicator data.

(b) Standard: Program data. The proposed rule would require the use of quality indicator data in a quality assessment and performance improvement program, but would not require any specific data collection or utilization, nor would it require hospices to report the collected data. This would give hospices flexibility and minimize burden.

(c) Standard: Program activities. This new standard would identify certain areas that would be required to be covered in a hospice's customized quality assessment and performance improvement program. The categories would be sufficiently broad to allow for a vast range of acceptable compliance methods. This would minimize burden.

TABLE 4.—QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENT BURDEN ASSESSMENT

Standard	Time per hospice (hours)	Total time (hours)	Cost per hospice	Total cost
QAPI development	12	28,944	$504	$1,215,648
QAPI implementation	12	28,944	504	1,215,648
Total annually	24	57,888	1,008	2,431,296

Infection Control (§ 418.60)

There is no specific existing requirement for infection control other than what is briefly mentioned in the existing § 418.100(i), Standard: Isolation areas. However, we believe that hospice clinicians such as nurses, physicians, and therapists are already using infection control practice as part of the current requirement that hospice clinicians provide services to patients in accordance with accepted standards of practice. It is an accepted standard of practice to use infection control methods when caring for patients. This proposed regulation would reinforce those positive infection control practices and would address the serious nature and potential hazards of infectious and communicable diseases. Infection control and standard precautions are long-standing clinical practices that are standard throughout the medical industry. This proposed CoP would require hospices to continue to take specific and appropriate actions to address the prevention and control of infections, and to educate the patients, staff and caregivers on the hazards, prevention and control of infections. We acknowledge that this is a new focus; however, we do not believe this would add any regulatory burden, since this section of the proposed rule reflects contemporary standard practice in hospice programs.

Core Services (§ 418.64)

The proposed rule would allow core services to be provided under contract with another Medicare certified hospice in certain extraordinary or other non-routine circumstances as described, allowing hospices more flexibility. In addition, it would allow hospices to contract for highly specialized nursing services, allowing for even more flexibility. The option to contract out for highly specialized nursing services would allow hospices to provide such highly specialized services at a lower cost than if the hospice directly employed individuals to perform such services. We are proposing that hospices that choose to contract for core services or highly specialized nursing services must have a contract with the entity providing the contracted services. Negotiating, documenting and signing a business contract is a standard business practice and does not impose a burden.

The proposed rule also would require that a psychosocial assessment of the patient be undertaken by the social worker providing medical social services. There is no substantive change to this regulatory burden.

Waiver of Requirement—Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Dietary Counseling (§ 418.74)

This proposed waiver, currently implemented through a memorandum from CMS's Center for Medicaid and State Operations, would reduce the compliance burden on hospices located in non-urbanized areas. If the hospice program could demonstrate that recruitment efforts were unsuccessful, it

could request certain waivers with respect to PT, OT, speech-language pathology, and dietary counseling. Thus far there have been less than five applications for this waiver in the last four years; therefore we believe that the burden is negligible.

Home Health Aide and Homemaker Services (§ 418.76)

Home health aide and homemaker services are an integral part of hospice care, yet they receive little attention in the current regulation. These services are briefly addressed in § 418.94 with a standard regarding the supervision of home health aide services and a standard regarding written patient care instructions. These two standards appear in the proposed regulation, with some minor alterations. The proposed regulation also would add several new requirements.

(b) Standard: Content and duration of home health aide classroom and supervised practical training; (c) Standard: Competency evaluation; (d) Standard: In-service training. These three standards would describe the ways in which a home health aide could meet the proposed qualification requirements. All of these standards would require the hospice to maintain documentation that each home health aide met these qualifications. The burden associated with these standards is the time it would take to complete the required documentation. We estimate that it would take five minutes to document the information and that an office employee would complete this task. In addition, we have calculated the burden based on an assumed employee turnover rate of 20%, meaning that we expect that the average hospice would replace 20% of its home health aides in a given year, or roughly one home health aide a year based on the employment of 5 home health aides. We believe that this is a reasonable assumption. Based on the above-mentioned estimates and assumptions, we estimate that will cost an average hospice $1.60 to document that its home health aides meet the proposed qualification requirements, for a total cost of $3,859.20 nationwide.

- 19 an hour/60 minutes = $0.32 minute × 5 minutes to document that requirements are met per home health aide = $1.60 × 1 document per year = $1.60 per hospice
- $1.60 per hospice × 2,412 hospices = $3,859.20

(g) Standard: Home health aide assignments and duties. The home health aide would be required to report changes in the patient's needs to a registered nurse, and complete appropriate records in compliance with the hospice's policies and procedures. This new requirement reflects the standard industry practice of maintaining communication between all healthcare providers and maintaining a complete patient record.

(h) Standard: Supervision of home health aides. This standard would retain the current rule's requirement that a registered nurse or qualified therapist visit the patient's home to assess home health aide services every 14 days. It also would add a requirement that a registered nurse or qualified therapist visit the patient's home every 28 days when the aide is providing services in the home. We believe that thoroughly supervising employees is standard practice and does not increase burden.

(j) Standard: Homemaker qualifications. The proposed regulation would require homemakers to complete a hospice orientation program addressing the needs and concerns of patients and families coping with a terminal illness. We believe that this standard would not impose any additional regulatory burden because hospices train all their employees, including homemakers, to deal with the realities of hospice care; this is already accepted standard practice in the industry.

(k) Standard: Homemaker supervision and duties. The interdisciplinary group would be required to develop written instructions for the homemaker. We believe that providing patient care instructions is a usual and customary medical practice; therefore, this requirement would not impose any additional regulatory burden.

TABLE 5.—HOME HEALTH AIDE AND HOMEMAKER SERVICES BURDEN ASSESSMENT

Standard	Time per aid (minutes)	Time per hospice (minutes)	Total time (hours)	Cost per aid	Cost per average hospice	Total cost
Documentation (based on 1 new HHA per year)*	5	5	201	$1.60	$1.60	$3,859.20
Totals	5	5	201	1.60	1.60	3,859.20

Organization and Administration of Services (§ 418.100)

The proposed requirement is essentially the same as the current regarding the organization and administration of services. However, the proposed rule would add a specification that a hospice's satellite locations be approved by CMS, a practice that is currently mandated through a June 1997 memorandum from CMS' Center for Medicaid and State Operations. A specification for the maintenance of in-service training records and a requirement that education/training be given to the patient, family and primary caregiver would also be new regulations. However, we believe all of these additions reflect standard practice in the industry and present no additional burden.

Medical Director (§ 418.102)

The existing rule requires that the medical director be an employee of the hospice. The proposed rule would permit the medical director to work under a contractual arrangement; this would reduce the program and hiring burden on the hospice, particularly if the hospice is in a rural area.

We believe that the proposed rule would merely codify the current standards of practice to which medical directors adhere. For example, coordinating with other physicians and health care professionals, considering broad criteria when making the determination that hospice care is appropriate, and reviewing relevant information prior to the date that re-certification is necessary are all standard procedures.

Clinical Records (§ 418.104)

The proposed rule would permit hospices to maintain records electronically. This would provide flexibility and reduce burden. While the proposed rule also would add specificity in regard to content, authentication, retrievability, retention, and transfer of records, we believe that these additions reflect standard industry practice and would therefore add no burden.

Drugs, Medical Supplies and Durable Medical Equipment (§ 418.106)

(a) Standard: Administration of drugs and biologicals. The proposed rule would require the interdisciplinary group to periodically review the plan of care to determine whether the patient and/or family continued to have the ability to safely administer drugs and biologicals. This review, however, would not burden hospices because it would be part of the standard 14 day review of the patient's plan of care that already would be performed by the interdisciplinary group. The current rule details persons permitted to administer drugs. The proposed rule would eliminate this level of specificity, thus giving the hospice greater flexibility. The proposed rule would require only that drugs be administered in accordance with standards of practice and the patient's plan of care.

(b) Standard: Controlled drugs in the patient's home. The current rule requires that the hospice have a policy for the disposal of controlled drugs maintained in the patient's home. The proposed rule would add to the existing rule a requirement that the hospice have a policy for tracking and collecting these drugs. The proposed rule would require the use and disposal of controlled substances to be discussed with the family, and would require the hospice nurse to document this discussion. Developing written policies is part of usual and customary medical and business practices. Thus, this standard would create no additional burden.

The second requirement, a documented education session regarding hospice drug policies would require approximately five minutes during the initial evaluation conducted by a registered nurse. Fulfilling the requirement would cost $2.25 per patient based upon the average hourly rate for a registered nurse.

- $27 hour/60 minutes = $0.45 minute × 5 minutes = $2.25
- $2.25 per patient × 295 patients = $663.75
- $2.25 per patient × 713,000 patients = $1,604,250

(c) Standard: Use and maintenance of equipment and supplies. The existing rule does not address the use of durable medical equipment, but the proposed regulation would do so. The proposed rule would add a requirement that the hospice ensure that there is a process for routine and preventive maintenance of equipment, that the family receives instruction in regard to the use of equipment and supplies, and that the safe use of equipment and supplies be demonstrated and monitored. This requirement would be fulfilled by the individual most frequently at the home, usually a home health aide. Performing these duties would take approximately 15 minutes per patient.

- $14 hour/60 minutes = $0.23 minute × 15 minutes per patient= $3.45 per patient
- $3.45 per patient × 295 patients = $1,017.75
- $3.45 per patient × 713,000 patients = $2,459,850

TABLE 6.—DRUGS, MEDICAL SUPPLIES AND DURABLE MEDICAL EQUIPMENT BURDEN ASSESSMENT

Standard	Time per patient (minutes)	Time per average hospice (minutes)	Total industry time (hours)	Cost per patient	Cost per average hospice	Total industry cost
Drug Education	5	24.58	59,417	$2.25	$663.75	$1,604,250
Equipment	15	73.75	178,250	3.45	1,017.75	2,459,850
Totals	20	98.33	237,667	5.70	1,681.50	4,064,100≤

Short Term Inpatient Care (§ 418.108)

The proposed rule would be more specific than the current rule with respect to the substance of the written agreement, which we believe is a usual and customary business practice. This provision therefore would not increase regulatory burden.

Hospices That Provide Inpatient Care Directly (§ 418.110)

(a) Standard: Staffing. The existing rule is highly prescriptive in requiring a registered nurse to provide direct patient care on each shift. We would eliminate this requirement, to reflect the proposed regulation's focus on expected outcomes of care. We believe that the patient plan of care drives the amount and skill level of the nursing care that would be required and therefore would help the hospice determine staffing levels that would reflect the volume of patients, patient acuity, and the level of intensity of the nursing care required. This approach would give the hospice greater flexibility in staffing and therefore reduce the hospice's regulatory burden.

(c) Standard: Physical Environment. In addition to the existing requirement of having and practicing a disaster plan, under the proposed regulations a hospice would be required to report safety breaches and equipment failures to the appropriate State and local bodies having jurisdiction. The entities to which a hospice would report a breach or failure would depend on the nature of the breach or failure. Additional guidance on this standard would be included in another CMS document, such as the State Operations Manual.

Complying with this standard would require additional staff time. In 2001, 1,375 deficiencies were issued by State surveyors for violations of the Medicare hospice Conditions of Participation. At least some of these deficiencies were related to the physical environment of inpatient hospices. We estimate that 110 of those deficiencies were related to the safety of the physical environment and equipment. Therefore, we believe that approximately 110 safety breaches and equipment failures would need to be reported annually by the hospice industry.

We estimate that reporting safety breaches and equipment failures would take 30 minutes per episode to complete. This task would be completed by a hospice administrator. Each report, therefore, would cost $21, for an industry total of $2,310 annually.

- 110 reports × 30 minutes per report = 55 hours nationwide
- $42 hour/60 minutes = $0.70 minute × 30 minutes = $21 per report
- $21 per report × 110 reports = $2,310

(i) Standard: Infection Control, contains a cross-reference to standards contained in § 418.60. A discussion of the burden of those requirements is discussed in that section.

(l) Standard: Meal service and menu planning. The existing rule is highly prescriptive in terms of specifying the number of meals, meal spacing, meal planning, and menu planning. The proposed rule would give these hospices far greater flexibility by requiring only that the food be sanitary,

nutritious (including therapeutic diets that are in the plan of care), fulfilling, palatable and attractive. We believe that this would reduce the hospice's burden.

(n) Standard: Pharmacist. The proposed rule would provide greater flexibility in regard to administering medication by permitting any health care professional to carry out this function, if it were in accordance with his/her scope of practice. We believe that this would reduce the hospice's regulatory burden.

The proposed rule also would require hospices to investigate discrepancies involving controlled drugs and to document an account of the investigation. Of the 1,375 deficiencies issued by State surveyors in 2001, we estimate that 55 were related to controlled drug violations. We do not expect a significant increase in violations, and estimate that 55 investigations would be conducted and documented throughout the hospice industry.

The proposed rule would require the hospice's pharmacist and administrator to conduct controlled drug investigations. We estimate that a thorough investigation, including an examination of the records of incoming and outgoing drugs and biologicals, and report would require one additional hour per incident. The entire industry would thus spend 55 hours annually at a cost of $4,785 to fulfill this requirement. Maintaining inventory records incoming and outgoing drugs and biologicals is a usual and customary business practice and is not a burden.

- $42 hour + $45 hour = $87 hour × 1 hour investigation = $87 per investigation
- $87 per investigation × 55 investigations = $4,785

(o) Standard: Seclusion and restraint. The proposed rule would add considerable detail in regard to seclusion and restraint. This section would be adapted from the language of the Patient's Rights Condition of Participation for hospitals published as an Interim Final Rule in the **Federal Register** in July 1999, currently codified at 42 CFR 482.13. The burden associated with this standard would be the time it would take to document the need for seclusion and/or restraint, and the time to write the order. We estimate that a hospice would spend 6 hours to develop this form, for a nationwide total of 14,472 hours. After this one-time expenditure, it would take four minutes per patient to meet this documentation requirement for a total of 475 hours nationwide, based on an estimate of the use of seclusion and/or restraint on 1% of the entire patient population. The annual cost of this standard would therefore be $39,928 nationwide.

- 6 hours per hospice × 2,412 hospices = 14,472 hours to develop form
- 6 hours per hospice × $42 hour = $252 to develop form
- $252 to develop form × 2,412 hospices = $607,824
- 713,000 patients × 0.01 percent = 7,130 patients nationwide requiring seclusion or restraint × 4 minutes per patient to complete form = 475 hours nationwide to complete form
- 7,130 patients nationwide requiring seclusion or restraint/2,412 hospices = 3 patients per hospice requiring seclusion or restraint
- $84 hour/60 minutes = $1.40 minute × 4 minutes per patient to complete form = $5.60 per patient to complete form
- $5.60 per patient × 3 patients per hospice requiring seclusion or restraint = $16.80 per hospice
- $5.60 per patient × 7,130 patients = $39,928

There would also be costs associated with developing training programs for staff regarding restraint and seclusion use and alternative interventions; however, we are not dictating how a hospice meets this requirement. Therefore, hospices would have the flexibility to decide how to meet this requirement. We believe that the benefits associated with training staff would far outweigh the costs involved, since proper training would protect the hospice from situations of inappropriate restraint and seclusion use and situations that could lead to patient injuries and/or deaths.

Finally, hospices would have to report to CMS, through the appropriate CMS regional office, all deaths that occur while a patient is restrained or in seclusion. We have no concrete estimate of the number of deaths that occur per year. There could be a nominal cost involved in making a telephone call to the appropriate CMS regional office; however, because we expect that this regulation would reduce the number of deaths from restraint and seclusion use, we estimate that the number of reports would average less than one call per hospice per year. Therefore, we think the cost will be negligible.

TABLE 7.—HOSPICES THAT PROVIDE INPATIENT CARE DIRECTLY BURDEN ASSESSMENT

Standard	Time per patient	Time per hospice	Total time (hours)	Cost per patient	Cost per average hospice	Total cost
Physical environment	1 second	5 minutes	55	$0.01	$1.00	$2,310
Pharmacist	1 second	5 minutes	55	0.01	2.06	4,785
Seclusion form development	1 minute	6 hours	14,472	0.84	252	607,824
Seclusion form completion	4 minutes	12 minutes	475	5.60	16.80	39,928
Totals	5 minutes	6.25 hours	15,057	6.46	271.86	$654,847

Hospices That Provide Hospice Care to Residents of a SNF/NF, ICF/MR or Other Facility (§ 418.112)

The proposed rule would specify the minimum content of the written agreement hospice providers and facilities would be required to have and would recodify existing regulations concerning information sharing practices. These requirements reflect usual and customary business practices and would not increase a hospice's regulatory burden.

Personnel Qualifications (§ 418.114)

The proposed rule's personnel qualification section would specify that the current qualifications would apply only where there were no State licensing laws, or State certification or registration requirements for the profession. Additionally, the proposed rule would require a background check for each employee involved in direct patient care. In 2002, 39 states required criminal background checks for hospice employees. In these states, approximately 70,411 hospice employees already received a criminal background check, thus greatly reducing the overall potential burden. We estimate that hospices that have not previously performed background checks, accounting for approximately 19,876 hospice employees, would each

obtain 39 criminal background checks initially. Each background check request form would take 6 minutes to prepare and send, for a total of 4 hours per hospice the first year. For each year thereafter, we estimate that all hospices would complete background checks on approximately 8 new employees per year for a total of 48 minutes per hospice per year and 408 hours nationally per year.

- 90,271 employees in 2001 according to National Association for Home Care 2002 Hospice Industry Report/50 states = 1,805 average number of employees per state × 39 states already requiring background checks = 70,395 already required to have background checks
- 90,271 total employees × 70,395 already required to have background checks = 19,876 employees not already required to have background checks
- 90,271 employees/2,316 hospices in 2001 = 39 employees per average hospice
- 39 employees × 6 minutes per check = 4 hours per hospice
- 19,876 employees × 6 minutes per check = 1,988 hours nationwide

We estimate that the average cost for an individual background check is $12.50. We understand that some states may charge more or less that this fee to conduct a background check. In addition, some hospices may choose to conduct more extensive background checks that may cost more. We are not proposing to require that hospices conduct a specific type of background check or obtain such a check from a specific source. The flexibility of the proposed requirement would allow hospices to identify the most cost efficient method of meeting the requirement.

- $12.50 per check × 39 employees requiring checks = $487.50
- $12.50 per check × 19,876 employees requiring checks = $248,250

TABLE 8.—PERSONNEL QUALIFICATIONS BURDEN ASSESSMENT

Time per check (minutes)	Time per average hospice (minutes)	Total industry time (hours)	Cost per check	Total cost per average hospice	Total industry cost
6	1st year—4 hours annually—48.	1st year—1,988 hours annually—408.	$12.50	1st year—$487.50 annually—$100.	1st year—$248,250 annually—51,000.

TABLE 9.—TOTAL BURDEN ASSESSMENT PROPOSED REQUIREMENTS

[Total time and cost for all altered or new CoPs:]

Total time per patient (minutes)	Total time per hospice (hours)	Total industry time (hours)	Total cost per patient	Total cost per hospice	Total industry cost
53	275	644,625	$25.51	$7,389	$16,920,902

2. Effects on other providers:

Effects on other providers: We do not expect this regulation to affect any other provider.

3. Effects on the Medicare and Medicaid programs:

The costs to the Medicare and Medicaid programs resulting from this rule will be negligible.

C. Alternatives Considered

One alternative was to keep the existing CoPs. We concluded this was not a reasonable option because our existing CoPs are problem-focused. As discussed in the preamble, the problem-focused approach has inherent limits. Trying to ensure quality through the enforcement of prescriptive health and safety standards, rather than trying to improve quality of care for all patients, would not contribute to hospice improvement or stimulate broad-based quality of care initiatives.

Revising the existing CoPs would take advantage of continuing advances in the health care delivery field. We believe it is necessary to keep pace with growing demands for services.

In addition, listed below are other alternatives.

Patient's Rights (§ 418.52)

We considered including more prescriptive rights regarding privacy of a hospice patient's medical information. However, the privacy rule published in the **Federal Register** on December 28, 2000 (65 FR 82461) as amended on August 14, 2002 (67 FR 53182) and contained in 45 CFR parts 160 and 164, protects patient privacy adequately.

Comprehensive Assessment of the Patient (§ 418.54)

We considered not proposing the Comprehensive Assessment CoP. However, because the third most cited deficiency noted during hospice surveys is the absence of the assessment of needs, we believe it is essential to address this area. We also heard from hospice industry representatives, who recommended that we include a provision dealing with comprehensive assessment. Our decision to propose a general assessment requirement is based on the knowledge that individual hospices understand patient assessments and why an assessment is important to overall quality of care.

Interdisciplinary Group Care Planning and Coordination of Services (§ 418.56)

We considered leaving the current CoPs as written. However, it was logical to have the coordination of services, the interdisciplinary group requirements, and the care planning requirements in one CoP. Since the interdisciplinary approach to the delivery of hospice services reflects actual practice for hospices, we believe that this new proposed regulation would support current industry practice.

Quality Assessment and Performance Improvement § 418.58

We discussed eliminating any reference to the use of quality indicator data, including patient care data, for regulatory purposes. But, in light of the existing hospital and home health quality assessment and performance improvement activities requirements, we believe hospices must begin to build a foundation where quality indicators can be used to gather patient-related information. The use of quality indicator data would help in creating an effective quality assessment and performance improvement program. As a result, the hospices would be able to

better identify activities that lead to poor patient outcomes, and would be able to take corrective action to improve performance.

Infection Control (§ 418.60)

We considered leaving the existing CoP, which has very little reference to infection control. We also considered making infection control a standard under proposed § 418.58, Quality assessment and performance improvement. However, we believe that the serious nature and potential hazards of infectious and communicable diseases warrants a separate and identifiable CoP. This new condition would work in concert with the hospice's responsibility to carry out a quality assessment and performance improvement program that is geared to patient health and safety.

Licensed Professionals (§ 418.62)

We considered rewriting each existing CoP instead of combining all of them into the proposed CoP, § 418.62. However, we decided that the current CoPs were outdated and too prescriptive, and that a new condition would offer hospices more flexibility.

Medical Director (§ 418.102)

We changed part of this CoP because section 4445 of the Balanced Budget Act of 1997 mandated that CMS give hospices the option to utilize contractual relationships between hospices and physicians. Previously, physicians could only furnish services as direct hospice employees.

Clinical Records (§ 418.104)

We considered keeping the current CoP as written, but opted to clarify some of its standards to reflect current hospice practice. For example, we included the provision that hospices may use electronic records.

Drugs, Controlled Drugs, Biologicals, Medical Supplies, and Durable Medical Equipment (§ 418.106)

We considered a wide range of changes for this CoP. We enhanced the requirement for controlled substances in the home. We considered requiring the hospice, patient, and family to account for the controlled substance including disposal of the substance. We also considered requiring a pharmacist to conduct drug reviews on each patient record. However, we decided to discard these suggestions because they could place too much burden on hospices. We believe that the current CoPs needed to be strengthened and therefore, we opted to require the hospice, patient, and family to share in the accountability of controlled substances in the home.

Inpatient Care (Short-Term, Long-Term, and ICFs/MR) (§ 418.108, § 418.112)

Consideration was given to maintaining this CoP and revising the Long Term Care CoPs. However, we decided against relying on a future change in the Long Term Care CoPs and revised the hospice CoPs to the extent possible, to clarify the roles of SNF/NFs and hospices.

We also decided to separate out hospice care provided to hospice patients in SNF/NF, ICF/MR and other facilities. Thus, instead of a single CoP that addresses hospice care provided in all inpatient facilities, we created a CoP entitled Short Term Inpatient Care and then a second CoP entitled Hospices that Provide Care to Residents in a SNF/NF, ICF/MR or Non certified facility. We chose this alternative because the concerns were related to coordination of care issues expressed by hospice and inpatient facility providers.

Personnel Qualifications (§ 418.114)

More prescriptive requirements addressing personnel qualifications were considered. As an example, we considered utilizing only Federal definitions for personnel qualifications instead of deferring to State law.

However, we decided to defer to State law for two reasons. First, we wanted to be consistent with other health care providers, and second, we believe a State can best determine what qualifications are needed to fit its population's needs. Each hospice has the option to require more stringent qualifications of its practitioners.

D. Conclusion

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 418 as follows:

PART 418—HOSPICE CARE

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 418.2 is revised to read as follows:

§ 418.2 Scope of the part.

This part establishes requirements and the conditions of participation that hospices must meet, and be in compliance with, in order to participate in the Medicare program. Subpart A of this part sets forth the statutory basis and scope and defines terms used in this part. Subpart B of this part specifies the eligibility requirements and the benefit periods. Subpart C of this part specifies the conditions of participation that hospice providers must meet regarding patient and family care. Subpart D of this part specifies the organizational environment that hospice providers must meet as conditions of participation. Subpart E is reserved for future use. Subpart F specifies coinsurance amounts applicable to hospice care.

3. Section 418.3 is revised to read as follows:

§ 418.3 Definitions

For the purposes of this part—

Attending physician means a—

(1)(i) Doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs that function or action; or

(ii) Nurse practitioner who meets the training, education and experience requirements as the Secretary may prescribe; and

(2) Is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

Bereavement counseling means emotional, psychosocial, and spiritual support and services provided after the

death of the patient to assist with issues related to grief, loss, and adjusting.

Cap period means the 12-month period ending October 31 used in the application of the cap on overall hospice reimbursement specified in § 418.309.

Clinical note means a notation of a contact with the patient that is written and dated by any person providing services and that describes signs and symptoms, treatments and medications administered, including the patient's reaction and/or response, and any changes in physical or emotional condition.

Drug restraint means a medication used to control behavior or to restrict the patient's freedom of movement which is not a standard treatment for a patient's medical or psychiatric condition.

Employee means a person who works for the hospice and for whom the hospice is required to issue a W–2 form on his or her behalf, or if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice or is a volunteer under the jurisdiction of the hospice.

Hospice means a public agency or private organization or subdivision of either of these that is primarily engaged in providing hospice care as defined in this section.

Hospice care means a comprehensive set of services described in 1861(dd)(1) of the Act, identified and coordinated by an interdisciplinary team to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and/or family members, as delineated in a specific patient plan of care.

Licensed professional means a licensed person sanctioned by the State in which services are delivered, furnishing services such as skilled nursing care, physical therapy, speech-language pathology, occupational therapy, and medical social services.

Palliative care means patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice.

Physical restraint means any manual method or physical or mechanical device, material, or equipment attached to the patient's body that he or she cannot easily remove that restricts freedom of movement or normal access to one's body.

Progress note means a written notation, dated and signed by any person providing services, that summarizes facts about the care furnished and the patient's response during a given period of time.

Representative means an individual who has the authority under State law (whether by statute or pursuant to an appointment by the courts of the State) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill patient who is mentally or physically incapacitated. This may include a legal guardian.

Restraint means either a physical restraint or a drug used as a restraint.

Satellite location means a Medicare-approved location from which the hospice provides hospice care and services within a portion of the total geographic area served by the hospice location issued the provider agreement number. The satellite location is part of the hospice and shares administration, supervision, and services in a manner that renders it unnecessary for the satellite location to independently meet the conditions of participation as a hospice.

Seclusion means the confinement of a person in a room or an area where a person is isolated and physically prevented from leaving.

Terminally ill means that the patient has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course.

Subpart E—[Removed and Reserved]

4. Subpart E is removed and reserved.

5. Subparts C and D are revised to read as follows:

Subpart C—Conditions of Participation: Patient Care

Sec.

418.52 Condition of participation: Patient's rights.
418.54 Condition of participation: Comprehensive assessment of the patient.
418.56 Condition of participation: Interdisciplinary group care planning and coordination of services.
418.58 Condition of participation: Quality assessment and performance improvement.
418.60 Condition of participation: Infection control.
418.62 Condition of participation: Licensed professional services.

Core Services

418.64 Condition of participation: Core services.
418.66 Condition of participation: Nursing services—waiver of requirement that substantially all nursing services be routinely provided directly by a hospice.

Noncore Services

418.70 Condition of participation: Furnishing of noncore services.
418.72 Condition of participation: Physical therapy, occupational therapy, and speech-language pathology.
418.74 Waiver of requirement-Physical therapy, occupational therapy, speech-language pathology and dietary counseling.
418.76 Condition of participation: Home health aide and homemaker services.
418.78 Condition of participation: Volunteers.

Subpart D—Conditions of Participation: Organizational Environment

418.100 Condition of participation: Organization and administration of services.
418.102 Condition of participation: Medical director.
418.104 Conditions of participation: Clinical records.
418.106 Condition of participation: Drugs, controlled drugs and biologicals, medical supplies, and durable medical equipment.
418.108 Condition of participation: Short-term inpatient care.
418.110 Condition of participation: Hospices that provide inpatient care directly.
418.112 Condition of participation: Hospices that provide hospice care to residents of a SNF/NF, ICF/MR, or other facilities.
418.114 Condition of participation: Personnel qualifications for licensed professionals.
418.116 Condition of participation: Compliance with Federal, State, and local laws and regulations related to health and safety of patients.

Subpart C—Conditions of Participation: Patient Care

§ 418.52 Condition of participation: Patient's rights.

The patient has the right to be informed of his or her rights, and the hospice must protect and promote the exercise of these rights.

(a) *Standard: Notice of rights.* (1) The hospice must provide the patient or representative with verbal and written notice of the patient's rights and responsibilities in a language and manner that the patient understands during the initial evaluation visit in advance of furnishing care.

(2) The hospice must comply with the requirements of subpart I of part 489 of this chapter regarding advance directives. The hospice must inform and distribute written information to the patient concerning its policies on advance directives, including a description of applicable State law.

(3) The hospice must inform the patient and family of the hospice's drug

policies and procedures, including the policies and procedures regarding the tracking and disposing of controlled substances.

(4) The hospice must maintain documentation showing that it has complied with the requirements of this section and that the patient or representative has demonstrated an understanding of these rights.

(b) *Standard: Exercise of rights and respect for property and person.* (1) The patient has the right—

(i) To exercise his or her rights as a patient of the hospice;

(ii) To have his or her property and person treated with respect; and

(iii) To voice grievances regarding treatment or care that is (or fails to be) furnished and the lack of respect for property by anyone who is furnishing services on behalf of the hospice; and

(iv) To not be subjected to discrimination or reprisal for exercising his or her rights.

(2) If a patient has been adjudged incompetent under State law by a court of proper jurisdiction, the rights of the patient are exercised by the person appointed pursuant to State law to act on the patient's behalf.

(3) If a State court has not adjudged a patient incompetent, any legal representative designated by the patient in accordance with State law may exercise the patient's rights to the extent allowed by State law.

(4) The hospice must—

(i) Ensure that all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property are reported to State and local bodies having jurisdiction (including to the State survey and certification agency) within at least 5 working days of the incident, and immediately to the hospice administrator. Investigations and/or documentation of all alleged violations must be conducted in accordance with established procedures.;

(ii) Immediately investigate all alleged violations and immediately take action to prevent further potential abuse while the alleged violation is being verified;

(iii) Take appropriate corrective action in accordance with State law if the alleged violation is verified by the hospice administration or an outside body having jurisdiction, such as the State survey agency or local law enforcement agency; and

(iv) Investigate complaints made by a patient or the patient's family or representative regarding treatment or care that is (or fails to be) furnished, lack of respect for the patient or the patient's property by anyone furnishing services on behalf of the hospice, and document both the existence of the complaint and the steps taken to resolve the complaint.

(c) *Standard: Pain management and symptom control.* The patient has a right to receive effective pain management and symptom control from the hospice.

(d) *Standard: Confidentiality of clinical records.* The hospice must maintain the confidentiality of clinical records. Access to or release of patient information and clinical records is permitted in accordance with 45 CFR parts 160 and 164.

(e) *Standard: Patient liability.* Before care is initiated, the patient must be informed, verbally and in writing, and in a language that he or she can understand, of the extent to which payment may be expected from the patient, Medicare or Medicaid, third-party payers, or other resources of funding known to the hospice.

§ 418.54 Condition of participation: Comprehensive assessment of the patient.

The hospice must conduct and document in writing a patient-specific comprehensive assessment that identifies the patient's need for hospice care and services, and the patient's need for medical, nursing, psychosocial, emotional, and spiritual care. This care includes, but is not limited to, the palliation and management of the terminal illness and related medical conditions.

(a) *Standard: Initial assessment.* The hospice registered nurse must make an initial assessment visit within 24 hours after the hospice receives a physician's admission order for care (unless ordered otherwise by the physician), to determine the patient's immediate care and support needs.

(b) *Standard: Time frame for completion of the comprehensive assessment.* The hospice interdisciplinary group in consultation with the individual's attending physician, must complete the comprehensive assessment no later than 4 calendar days after the patient elects the hospice benefit.

(c) *Standard: Content of the comprehensive assessment.* The comprehensive assessment must identify the physical, psychosocial, emotional, and spiritual needs related to the terminal illness that must be addressed in order to promote the hospice patient's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment describes—

(1) The nature and condition causing admission (including the presence or lack of objective data and subjective complaints);

(2) Complications and risk factors that affect care planning;

(3) Factors that must be considered in developing individualized care plan interventions, including—

(i) *Bereavement.* An initial bereavement assessment of the needs of the patient's family and other individuals focusing on the social, spiritual, and cultural factors that may impact their ability to cope with the patient's death. Information gathered from the initial bereavement assessment must be incorporated into the bereavement plan of care.

(ii) *Drug therapy.* A review of the patient's prescription and over-the-counter drug profile, including but not limited to identification of the following—

(A) Ineffective drug therapy;

(B) Unwanted drug side and toxic effects; and

(C) Drug interactions.

(4) The need for referrals and further evaluation by appropriate health professionals.

(d) *Standard: Update of the comprehensive assessment.* The update of the comprehensive assessment must be accomplished by the hospice interdisciplinary group and must consider changes that have taken place since the initial assessment. It must include information on the patient's progress toward desired outcomes, as well as a reassessment of the patient's response to care. The assessment update must be accomplished—

(1) As frequently as the condition of the patient requires, but no less frequently than every 14 days; and

(2) At the time of each recertification.

(e) *Standard: Patient outcome measures.* (1) The comprehensive assessment must include data elements that allow for measurement of outcomes. The hospice must measure and document data in the same way for all patients. The data elements must take into consideration aspects of care related to hospice and palliation.

(2) The data elements must be an integral part of the comprehensive assessment and must be documented in a systematic and retrievable way for each patient. The data elements for each patient must be used in individual patient care planning and in the coordination of services, and must be used in the aggregate for the hospice's quality assessment and performance improvement program.

§ 418.56 Condition of participation: Interdisciplinary group care planning and coordination of services.

The hospice must designate an interdisciplinary group or groups as specified in paragraph (a) of this section which, in consultation with the patient's attending physician, must prepare a written plan of care for each patient. The plan of care must specify the hospice care and services necessary to meet the patient and family-specific needs identified in the comprehensive assessment and as it relates to the terminal illness and related conditions.

(a) *Standard: Approach to service delivery.* (1) The hospice must designate an interdisciplinary group or groups composed of individuals who work together to meet the physical, medical, social, emotional, and spiritual needs of the hospice patients and families facing terminal illness and bereavement. Interdisciplinary group members must provide the care and services offered by the hospice, and the group in its entirety must supervise the care and services. The hospice must designate a qualified health care professional that is a member of the interdisciplinary group to provide coordination of care and to ensure continuous assessment of each patient's and family's needs and implementation of the interdisciplinary plan of care. The interdisciplinary group must include, but is not limited to, individuals who are qualified and competent to practice in the following professional roles:

(i) A doctor of medicine or osteopathy (who is not the patient's attending physician).

(ii) A registered nurse.

(iii) A social worker.

(iv) A pastoral, clergy, or other spiritual counselor.

(2) If the hospice has more than one interdisciplinary group, it must designate in advance only one of those groups to establish policies governing the day-to-day provision of hospice care and services.

(b) *Standard: Plan of care.* All hospice care and services furnished to patients and their families must follow a written plan of care established by the hospice interdisciplinary group in collaboration with the attending physician. The hospice must ensure that each patient and family and primary caregiver(s) receive education and training provided by the hospice as appropriate to the care and services identified in the plan of care.

(c) *Standard: Content of the plan of care.* The hospice must develop a written plan of care for each patient that reflects prescribed interventions based on the problems identified in the initial comprehensive and updated comprehensive assessments, and other assessments. The plan of care must include but not be limited to—

(1) Interventions to facilitate the management of pain and symptoms;

(2) A detailed statement of the scope and frequency of services necessary to meet the specific patient and family needs;

(3) Measurable targeted outcomes anticipated from implementing and coordinating the plan of care;

(4) Drugs and treatment necessary to meet the needs of the patient;

(5) Medical supplies and appliances necessary to meet the needs of the patient; and

(6) The interdisciplinary group's documentation of patient and family understanding, involvement, and agreement with the plan of care, in accordance with the hospice's own policies, in the clinical record.

(d) *Standard: Review of the plan of care.* The medical director or physician designee, and the hospice interdisciplinary team (in collaboration with the individual's attending physician to the extent possible) must review, revise and document the plan as necessary at intervals specified in the plan but no less than every 14 calendar days. A revised plan of care must include information from the patient's updated comprehensive assessment and the patient's progress toward outcomes specified in the plan of care.

(e) *Standard: Coordination of services.* The hospice must develop and maintain a system of communication and integration, in accordance with the hospice's own policies and procedures, to—

(1) Ensure the interdisciplinary group, through its designated professionals, maintains responsibility for directing, coordinating, and supervising the care and services provided;

(2) Ensure that care and services are provided in accordance with the plan of care;

(3) Ensure that the care and services provided are based on all assessments of the patient and family needs; and

(4) Provide for and ensure the ongoing sharing of information between all disciplines providing care and services in the home, in outpatient settings, and in inpatient settings, irrespective whether the care and services are provided directly or under arrangement.

§ 418.58 Condition of participation: Quality assessment and performance improvement.

The hospice must develop, implement, and maintain an effective, ongoing, hospice-wide data-driven quality assessment and performance improvement program. The hospice's governing body must ensure that the program: Reflects the complexity of its organization and services; involves all hospice services (including those services furnished under contract or arrangement); focuses on indicators related to improved palliative outcomes; focuses on the end-of-life support services provided; and takes actions to demonstrate improvement in hospice performance. The hospice must maintain documentary evidence of its quality assessment and performance improvement program and be able to demonstrate its operation to CMS.

(a) *Standard: Program scope.* (1) The program must at least be capable of showing measurable improvement in indicators for which there is evidence that improvement in those indicators will improve palliative outcomes and end-of-life support services.

(2) The hospice must measure, analyze, and track quality indicators, including adverse patient events, and other aspects of performance that enable the hospice to assess processes of care, hospice services, and operations.

(b) *Standard: Program data.* (1) The program must utilize quality indicator data, including patient care, and other relevant data, in the design of its program.

(2) The hospice must use the data collected to—

(i) Monitor the effectiveness and safety of services and quality of care; and

(ii) Identify opportunities for improvement.

(3) The frequency and detail of the data collection must be specified by the hospice's governing body.

(c) *Standard: Program activities.* (1) The hospice's performance improvement activities must—

(i) Focus on high risk, high volume, or problem-prone areas;

(ii) Consider incidence, prevalence, and severity of problems in those areas; and

(iii) Affect palliative outcomes, patient safety, and quality of care.

(2) Performance improvement activities must track adverse patient events, analyze their causes, and implement preventive actions and mechanisms that include feedback and learning throughout the hospice.

(3) The hospice must take actions aimed at performance improvement and, after implementing those actions, the hospice must measure its success and track performance to ensure that improvements are sustained.

(d) *Standard: Performance improvement projects.* (1) The number and scope of distinct improvement

projects conducted annually must reflect the scope, complexity, and past performance of the hospice's services and operations.

(2) The hospice must document what quality improvement projects are being conducted, the reasons for conducting these projects, and the measurable progress achieved on these projects.

(e) *Standard: Executive responsibilities.* The hospice's governing body is responsible for ensuring the following:

(1) That an ongoing program for quality improvement and patient safety is defined, implemented and maintained;

(2) That the hospice-wide quality assessment and performance improvement efforts address priorities for improved quality of care and patient safety, and that all improvement actions are evaluated for effectiveness; and

(3) That clear expectations for patient safety are established.

§ 418.60 Condition of participation: Infection control.

The hospice must maintain and document an effective infection control program that protects patients, families and hospice personnel by preventing and controlling infections and communicable diseases.

(a) *Standard: Prevention.* The hospice must follow accepted standards of practice to prevent the transmission of infections and communicable diseases, including the use of standard precautions.

(b) *Standard: Control.* The hospice must maintain a coordinated agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases that—

(1) Is an integral part of the hospice's quality assessment and performance improvement program; and

(2) Includes:

(i) A method of identifying infectious; and communicable disease problems; and

(ii) A plan for the appropriate actions that are expected to result in improvement and disease prevention.

(c) *Standard: Education.* The hospice must provide infection control education to staff, patients, and family members or other caregivers.

§ 418.62 Condition of participation: Licensed professional services.

(a) Licensed professional services provided directly or under arrangement must be authorized, delivered, and supervised only by health care professionals who meet the appropriate qualifications specified under 418.114 and who practice under the hospice's policies and procedures.

(b) Licensed professionals must actively participate in the coordination of all aspects of the patient's care, in accordance with current professional standards and practice, including participating in ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care, and contributing to patient and family counseling and education; and

(c) Licensed professionals must participate in the hospice's quality assessment and performance improvement program and hospice sponsored in-service training.

Core Services

§ 418.64 Condition of participation: Core services.

A hospice must routinely provide substantially all core services directly by hospice employees. These services must be provided in a manner consistent with acceptable standards of practice. These services include nursing services, medical social services, and counseling. The hospice may contract for physician services as specified in § 418.64(a). A hospice may, under extraordinary or other non-routine circumstances, enter into a written arrangement with another Medicare certified hospice program for the provision of core services to supplement hospice employee/staff to meet the needs of patients. Circumstances under which a hospice may enter into a written arrangement for the provision of core services include: Unanticipated periods of high patient loads, staffing shortages due to illness or other short-term temporary situations that interrupt patient care; and temporary travel of a patient outside of the hospice's service area.

(a) *Standard: Physician services.* The hospice medical director, physician employees, and contracted physician(s) of the hospice, in conjunction with the patient's attending physician, are responsible for the palliation and management of the terminal illness, conditions related to the terminal illness, and the general medical needs of the patient.

(1) All physician employees and those under contract, must function under the supervision of the hospice medical director.

(2) All physician employees and those under contract shall meet this requirement by either providing the services directly or through coordinating patient care with the attending physician.

(3) If the attending physician is unavailable, the medical director, contracted physician, and/or hospice physician employee is responsible for meeting the medical needs of the patient.

(b) *Standard: Nursing services.* (1) The hospice must provide nursing care and services by or under the supervision of a registered nurse. Nursing services must ensure that the nursing needs of the patient are met as identified in the patient's initial comprehensive assessment and updated assessments.

(2) If State law permits nurse practitioners (NPs) to see, treat and write orders for patients, then NPs may provide services to beneficiaries receiving hospice care. The role and scope of the services provided by a NP that is not the individual's attending physician must be specified in the individual's plan of care.

(3) Highly specialized nursing services that are provided so infrequently that the provision of such services by direct hospice employees would be impracticable and prohibitively expensive, may be provided under contract.

(c) *Standard: Medical social services.* Medical social services must be provided by a qualified social worker, under the direction of a physician. Social work services must be based on the patient's psychosocial assessment and the patient's and family's needs and acceptance of these services.

(d) *Standard: Counseling services.* Counseling services for adjustment to death and dying must be available to both the patient and the family. Counseling services must include but are not limited to the following:

(1) *Bereavement counseling.* The hospice must:

(i) Have an organized program for the provision of bereavement services furnished under the supervision of a qualified professional with experience in grief/loss counseling.

(ii) Make bereavement services available to the family and other individuals in the bereavement plan of care up to one year following the death of the patient. Bereavement counseling also extends to residents and employees of a SNF/NF, ICF/MR, or other facility when appropriate and identified in the bereavement plan of care.

(iii) Ensure that bereavement services reflect the needs of the bereaved.

(iv) Develop a bereavement plan of care that notes the kind of bereavement services to be provided and the frequency of service delivery. A special coverage provision for bereavement counseling is specified in § 418.204(c).

(2) *Nutritional counseling.* Nutritional counseling, when identified in the plan of care, must be performed by a qualified individual, which include dietitians as well as nurses and other individuals who are able to address and assure that the dietary needs of the patient are met.

(3) *Spiritual counseling.* The hospice must:

(i) Provide an assessment of the patient's and family's spiritual needs;

(ii) Provide spiritual counseling to meet these needs in accordance with the patient's and family's acceptance of this service, and in a manner consistent with patient and family beliefs and desires;

(iii) Facilitate visits by local clergy, pastoral counselors, or other individuals who can support the patient's spiritual needs to the best of its ability. The hospice is not required to go to extraordinary lengths to do so; and

(iv) Advise the patient and family of this service.

§ 418.66 Condition of participation: Nursing services—Waiver of requirement that substantially all nursing services be routinely provided directly by a hospice.

(a) CMS may waive the requirement in § 418.64(b) that a hospice provide nursing services directly, if the hospice is located in a nonurbanized area. The location of a hospice that operates in several areas is considered to be the location of its central office. The hospice must provide evidence to CMS that it has made a good faith effort to hire a sufficient number of nurses to provide services. CMS may waive the requirement that nursing services be furnished by employees based on the following criteria:

(1) The location of the hospice's central office is in a nonurbanized area as determined by the Bureau of the Census.

(2) There is evidence that a hospice was operational on or before January 1, 1983 including—

(i) Proof that the organization was established to provide hospice services on or before January 1, 1983;

(ii) Evidence that hospice-type services were furnished to patients on or before January 1, 1983; and

(iii) Evidence that hospice care was a discrete activity rather than an aspect of another type of provider's patient care program on or before January 1, 1983.

(3) By virtue of the following evidence that a hospice made a good faith effort to hire nurses:

(i) Copies of advertisements in local newspapers that demonstrate recruitment efforts;

(ii) Job descriptions for nurse employees;

(iii) Evidence that salary and benefits are competitive for the area; and

(iv) Evidence of any other recruiting activities (for example, recruiting efforts at health fairs and contacts with nurses at other providers in the area).

(b) Any waiver request is deemed to be granted unless it is denied within 60 days after it is received.

(c) Waivers will remain effective for 1 year at a time from the date of the request.

(d) CMS may approve a maximum of two 1-year extensions for each initial waiver. If a hospice wishes to receive a 1-year extension, it must submit a request to CMS before the expiration of the waiver period, and certify that the conditions under which it originally requested the initial waiver have not changed since the initial waiver was granted.

Non-Core Services

§ 418.70 Condition of participation: Furnishing of non-core services.

A hospice must ensure that the services described in § 418.72 through § 418.78 are provided directly by the hospice or under arrangements made by the hospice as specified in § 418.100. These services must be provided in a manner consistent with current standards of practice.

§ 418.72 Condition of participation: Physical therapy, occupational therapy, and speech-language pathology.

Physical therapy services, occupational therapy services, and speech-language pathology services must be available, and when provided, offered in a manner consistent with accepted standards of practice.

§ 418.74 Waiver of requirement—Physical therapy, occupational therapy, speech-language pathology, and dietary counseling.

(a) A hospice located in a non-urbanized area may submit a written request for a waiver of the requirement for providing physical therapy, occupational therapy, speech-language pathology, and dietary counseling services. The hospice may seek a waiver of the requirement that it make physical therapy, occupational therapy, speech-language pathology, and dietary counseling services (as needed) available on a 24-hour basis. The hospice may also seek a waiver of the requirement that it provide dietary counseling directly. The hospice must provide evidence that it has made a good faith effort to meet the requirements for these services before it seeks a waiver. CMS may approve a waiver application on the basis of the following criteria:

(1) The hospice is located in a non-urbanized area as determined by the Bureau of the Census.

(2) The hospice provides evidence that it had made a good faith effort to make available physical therapy, occupational therapy, speech-language pathology, and dietary counseling services on a 24-hour basis and/or to hire a dietary counselor to furnish services directly. This evidence must include—

(i) Copies of advertisements in local newspapers that demonstrate recruitment efforts;

(ii) Physical therapy, occupational therapy, speech-language pathology, and dietary counselor job descriptions;

(iii) Evidence that salary and benefits are competitive for the area; and

(iv) Evidence of any other recruiting activities (for example, recruiting efforts at health fairs and contact discussions with physical therapy, occupational therapy, speech-language pathology, and dietary counseling service providers in the area).

(b) Any waiver request is deemed to be granted unless it is denied within 60 days after it is received.

(c) An initial waiver will remain effective for 1 year at a time from the date of the request.

(d) CMS may approve a maximum of two 1-year extensions for each initial waiver. If a hospice wishes to receive a 1-year extension, it must submit a request to CMS prior to the expiration of the waiver period and certify that conditions under which it originally requested the waiver have not changed since the initial waiver was granted.

§ 418.76 Condition of participation: Home health aide and homemaker services.

All home health aide services must be provided by individuals who meet the personnel requirements specified in paragraph (a) of this section. Homemaker services must be provided by individuals who meet the personnel requirements specified in paragraph (j) of this section.

(a) *Standard: Home health aide qualifications.* (1) A qualified home health aide is a person who has successfully completed—

(i) A training program and competency evaluation as specified in paragraphs (b) and (c) of this section respectively; or

(ii) A competency evaluation program; or

(iii) A State licensure program that meets the requirements of paragraphs (b) and (c) of this section.

(2) A home health aide is not considered to have completed a training program, or a competency evaluation

program if, since the individual's most recent completion of the program(s), there has been a continuous period of 24 consecutive months during which none of the services furnished by the individual as described in § 409.40 of this chapter were for compensation. If there has been a 24-month lapse in furnishing services, the individual must complete another training and/or competency evaluation program before providing services, as specified in paragraph (a)(1) of this section.

(b) *Standard: Content and duration of home health aide classroom and supervised practical training.* (1) Home health aide training must include classroom and supervised practical classroom training in a practicum laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse, who is under the supervision of a registered nurse. Classroom and supervised practical training combined must total at least 75 hours.

(2) A minimum of 16 hours of classroom training must precede a minimum of 16 hours of supervised practical training as part of the 75 hours.

(3) A home health aide training program must address each of the following subject areas:

(i) Communication skills, including the ability to read, write, and verbally report clinical information to patients, care givers, and other hospice staff;

(ii) Observation, reporting, and documentation of patient status and the care or service furnished;

(iii) Reading and recording temperature, pulse, and respiration;

(iv) Basic infection control procedures;

(v) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(vi) Maintenance of a clean, safe, and healthy environment;

(vii) Recognizing emergencies and the knowledge of emergency procedures and their application;

(viii) The physical, emotional, and developmental needs of and ways to work with the populations served by the hospice, including the need for respect for the patient, his or her privacy, and his or her property;

(ix) Appropriate and safe techniques in performing personal hygiene and grooming tasks, including items on the following basic checklist—

(A) Bed bath;

(B) Sponge, tub, and shower bath;

(C) Hair shampoo (sink, tub, and bed);

(D) Nail and skin care;

(E) Oral hygiene; and

(F) Toileting and elimination;

(x) Safe transfer techniques and ambulation.

(xi) Normal range of motion and positioning.

(xii) Adequate nutrition and fluid intake.

(xiii) Any other task that the hospice may choose to have an aide perform. The hospice is responsible for training home health aides, as needed, for skills not covered in the basic checklist, as described in paragraph (b)(3)(ix) of this section.

(4) The hospice must maintain documentation that demonstrates that the requirements of this standard are met.

(c) *Standard: Competency evaluation.* An individual may furnish home health services on behalf of a hospice only after that individual has successfully completed a competency evaluation program as described in this section.

(1) The competency evaluation must address each of the subjects listed in paragraphs (b)(1) through (b)(3) of this section. Subject areas specified under paragraphs (b)(3)(i), (b)(3)(iii), (b)(3)(ix), (b)(3)(x) and (b)(3)(xi) of this section must be evaluated by observing an aide's performance of the task with a patient. The remaining subject areas may be evaluated through written examination, oral examination, or after observation of a home health aide with a patient.

(2) A home health aide competency evaluation program may be offered by any organization, except as specified in paragraph (f) of this section.

(3) The competency evaluation must be performed by a registered nurse in consultation with other skilled professionals, as appropriate.

(4) A home health aide is not considered competent in any task for which he or she is evaluated as unsatisfactory. An aide must not perform that task without direct supervision by a registered nurse until after he or she has received training in the task for which he or she was evaluated as ''unsatisfactory,'' and successfully completes a subsequent evaluation.

(5) The hospice must maintain documentation that demonstrates the requirements of this standard are being met.

(d) *Standard: In-service training.* A home health aide must receive at least l2 hours of in-service training during each 12-month period. In-service training may occur while an aide is furnishing care to a patient.

(1) In-service training may be offered by any organization except one that is excluded by paragraph (f) of this section, and must be supervised by a registered nurse.

(2) The hospice must maintain documentation that demonstrates the requirements of this standard are met.

(e) *Standard: Qualifications for instructors conducting classroom supervised practical training, competency evaluations and in-service training.* Classroom supervised practical training must be performed by or under the supervision of a registered nurse who possesses a minimum of two years nursing experience, at least one year of which must be in home health care. Other individuals may provide instruction under the general supervision of a registered nurse.

(f) *Standard: Eligible training organizations.* A home health aide training program may be offered by any organization except by a home health agency that, within the previous 2 years—

(1) Was out of compliance with the requirements of paragraphs (b) or (c) of this section;

(2) Permitted an individual that does not meet the definition of a ''qualified home health aide'' as specified in paragraph (a) of this section to furnish home health aide services (with the exception of licensed health professionals and volunteers);

(3) Was subjected to an extended (or partial extended) survey as a result of having been found to have furnished substandard care (or for other reasons at the discretion of CMS or the State);

(4) Was assessed a civil monetary penalty of $5,000 or more as an intermediate sanction;

(5) Was found by CMS to have compliance deficiencies that endangered the health and safety of the home health agency's patients and had temporary management appointed to oversee the management of the home health agency;

(6) Had all or part of its Medicare payments suspended; or

(7) Was found by CMS or the State under any Federal or State law to have:

(i) Had its participation in the Medicare program terminated;

(ii) Been assessed a penalty of $5,000 or more for deficiencies in Federal or State standards for home health agencies;

(iii) Been subjected to a suspension of Medicare payments to which it otherwise would have been entitled;

(iv) Operated under temporary management that was appointed by a governmental authority to oversee the operation of the home health agency and to ensure the health and safety of the home health agency's patients; or

(v) Been closed by CMS or the State, or had its patients transferred by the State.

(g) *Standard: Home health aide assignments and duties.* A registered nurse or the appropriate qualified therapist that is a member of the interdisciplinary team makes home health aide assignments.

(l) Home health aides are assigned to a specific patient by a registered nurse or the appropriate qualified therapist. Written patient care instructions for a home health aide must be prepared by a registered nurse or other appropriate skilled professional (*i.e.*, a physical therapist, speech-language pathologist, or occupational therapist) who is responsible for the supervision of a home health aide as specified under paragraph (h) of this section.

(2) A home health aide provides services that are:

(i) Ordered by the physician or nurse practitioner;

(ii) Included in the plan of care;

(iii) Permitted to be performed under State law by such home health aide; and

(iv) Consistent with the home health aide training.

(3) The duties of a home health aide include:

(i) The provision of hands-on personal care;

(ii) The performance of simple procedures as an extension of therapy or nursing services;

(iii) Assistance in ambulation or exercises; and

(iv) Assistance in administering medications that are ordinarily self-administered.

(4) Home health aides must report changes in the patient's medical, nursing, rehabilitative, and social needs to a registered nurse or other appropriate licensed professional, as the changes relate to the plan of care and quality assessment and improvement activities. Home health aides must also complete appropriate records in compliance with the hospice's policies and procedures.

(h) *Standard: Supervision of home health aides.* (1) A registered nurse or qualified therapist must make an onsite visit to the patient's home no less frequently than every 14 days to assess the home health aide's services. The home health aide does not have to be present during this visit. A registered nurse or qualified therapist must make an onsite visit to the location where the patient is receiving care in order to observe and assess each aide while he or she is performing care no less frequently than every 28 days.

(2) The supervising nurse or therapist must assess an aide's ability to demonstrate initial and continued satisfactory performance in meeting outcome criteria that include, but is not limited to—

(i) Following the patient's plan of care for completion of tasks assigned to the home health aide by the registered nurse or qualified therapist;

(ii) Creating successful interpersonal relationships with the patient and family;

(iii) Demonstrating competency with assigned tasks;

(iv) Complying with infection control policies and procedures; and

(v) Reporting changes in the patient's condition.

(3) If the hospice chooses to provide home health aide services under contract with another organization, the hospice's responsibilities include, but are not limited to—

(i) Ensuring the overall quality of care provided by an aide;

(ii) Supervising an aide's services as described in paragraphs (h)(1) and (h)(2) of this section; and

(iii) Ensuring that home health aides who provide services under arrangement have met the training and/or competency evaluation requirements of this condition.

(i) *Standard: Individuals furnishing Medicaid personal care aide-only services under a Medicaid personal care benefit.* An individual may furnish personal care services, as defined in § 440.167 of the Code of Federal Regulations, on behalf of a hospice or home health agency. Before the individual may furnish personal care services, the individual must be found competent by the State to furnish those services. The individual only needs to demonstrate competency in the services the individual is required to furnish.

(j) *Standard: Homemaker qualifications.* A qualified homemaker is a home health aide as described in § 418.76 or an individual who meets the standards in § 418.202(g) and has successfully completed hospice orientation addressing the needs and concerns of patients and families coping with a terminal illness.

(k) *Standard: Homemaker supervision and duties.* (1) Homemaker services must be coordinated by a member of the interdisciplinary group.

(2) Instructions for homemaker duties must be prepared by a member of the interdisciplinary group.

(3) Homemakers must report all concerns about the patient or family to the member of the interdisciplinary group who is coordinating homemaker services.

§ 418.78 Conditions of participation: Volunteers.

The hospice must use volunteers to the extent specified in paragraph (e) of this section. These volunteers must be used in defined roles and under the supervision of a designated hospice employee.

(a) *Standard: Training.* The hospice must maintain, document and provide volunteer orientation and training that is consistent with hospice industry standards.

(b) *Standard: Role.* Volunteers must be used in day-to-day administrative and/or direct patient care roles.

(c) *Standard: Recruiting and retaining.* The hospice must document and demonstrate viable and ongoing efforts to recruit and retain volunteers.

(d) *Standard: Cost saving.* The hospice must document the cost savings achieved through the use of volunteers. Documentation must include—

(1) The identification of each position that is occupied by a volunteer;

(2) The work time spent by volunteers occupying those positions; and

(3) Estimates of the dollar costs that the hospice would have incurred if paid employees occupied the positions identified in paragraph (d)(1) of this section for the amount of time specified in paragraph (d)(2) of this section.

(e) *Standard: Level of activity.* Volunteers must provide day-to-day administrative and/or direct patient care services in an amount that, at a minimum, equals 5 percent of the total patient care hours of all paid hospice employees and contract staff. The hospice must maintain records on the use of volunteers for patient care and administrative services, including the type of services and time worked.

Subpart D—Conditions of Participation: Organizational Environment

§ 418.100 Condition of participation: Organization and administration of services.

The hospice must organize, manage, and administer its resources to provide the hospice care and services to patients, caregivers and families necessary for the palliation and management of terminal illness.

(a) *Standard: Serving the hospice patient and family.* The hospice must ensure—

(1) That each patient receives and experiences hospice care that optimizes comfort and dignity; and

(2) That each patient experience hospice care that is consistent with patient and family needs and desires.

(b) *Standard: Governing body and administrator.* A governing body (or

designated persons so functioning) assumes full legal authority and responsibility for the management of the hospice, the provision of all hospice services, its fiscal operations, and continuous quality assessment and performance improvement. A qualified administrator reports to the governing body and is responsible for the day-to-day operation of the hospice. The administrator must be a hospice employee and possess education and experience required by the hospice's governing body.

(c) *Standard: Services.* (1) A hospice must be primarily engaged in providing the following care and services and must do so in a manner that is consistent within accepted standards of practice:

(i) Nursing services.

(ii) Medical social services.

(iii) Physician services.

(iv) Counseling services, including spiritual counseling, dietary counseling, and bereavement counseling.

(v) Home health aide, volunteer, and homemaker services.

(vi) Physical therapy, occupational therapy and speech-language pathology therapy services.

(vii) Short-term inpatient care.

(viii) Medical supplies (including drugs and biologicals) and medical appliances.

(2) Nursing services, physician services, and drugs and biologicals (as specified in § 418.106) must be made routinely available on a 24-hour basis 7 days a week. Other covered services must be available on a 24-hour basis when reasonable and necessary to meet the needs of the patient and family.

(d) *Standard: Continuation of care.* A hospice may not discontinue or reduce care provided to a Medicare or Medicaid beneficiary because of the beneficiary's inability to pay for that care.

(e) *Standard: Professional management responsibility.* A hospice that has a written agreement with another agency, individual, or organization to furnish any services under arrangement, must retain administrative and financial management, and supervision of staff and services for all arranged services, to ensure the provision of quality care. Arranged services must be supported by written agreements that require that all services be—

(1) Authorized by the hospice;

(2) Furnished in a safe and effective manner by personnel having at least the same qualifications as hospice employees; and

(3) Delivered in accordance with the patient's plan of care.

(f) *Standard: Hospice satellite locations.* (1) All hospice satellite locations must be approved by CMS before providing hospice care and services to Medicare patients. The determination that a satellite location does or does not meet the definition of a satellite location, as set forth in this part, is an initial determination, as set forth in § 498.3.

(2) The hospice must continually monitor and manage all services provided at all of its locations to ensure that services are delivered in a safe and effective manner and to ensure that each patient and family receives the necessary care and services outlined in the plan of care.

(g) *Standard: In-service training.* A hospice must assess the skills and competence of all individuals furnishing care, including volunteers furnishing services, and, as necessary, provide in-service training and education programs where required. The hospice must have written policies and procedures describing its method(s) of assessment of competency and maintain a written description of the in-service training provided during the previous 12 months.

§ 418.102 Condition of participation: Medical director.

The hospice must designate a physician to serve as medical director. The medical director must be a doctor of medicine or osteopathy who is either employed by, or under contract with, the hospice. When the medical director is not available, a physician designated by the medical director assumes the same responsibilities and obligations as the medical director. The medical director and physician designee coordinate with other physicians and health care professionals to ensure that each patient experiences medical care that reflects hospice policy.

(a) *Standard: Initial certification of terminal illness.* The medical director or physician designee reviews the clinical information for each hospice patient and provides written certification that it is anticipated that the patient's life expectancy is 6 months or less if the illness runs its normal course. The physician must consider the following criteria when making this determination:

(1) The primary terminal condition.

(2) Related diagnosis(es), if any.

(3) Current subjective and objective medical findings.

(4) Current medication and treatment orders.

(5) Information about the medical management of any of the patient's conditions unrelated to the terminal illness.

(b) *Standard: Recertification of the terminal illness.* Before the recertification period for each patient, as described in § 418.21(a), the medical director or physician designee must review:

(1) The patient's clinical information; and

(2) The patient's and family's expectations and wishes for the continuation of hospice care.

(c) *Standard: Coordination of medical care.* The medical director or physician designee, and the other members of the interdisciplinary group are jointly responsible for the coordination of the patient's medical care in its entirety. The medical director or physician designee is also responsible for directing the hospice's quality assessment and performance improvement program.

§ 418.104 Condition of participation: Clinical records.

A clinical record containing past and current findings is maintained for each hospice patient. The clinical record must contain accurate clinical information that is available to the patient's attending physician and hospice staff. The clinical record may be maintained electronically.

(a) *Standard: Content.* Each patient's record must include the following:

(1) The plan of care, initial assessment, comprehensive assessment, and updated comprehensive assessments, clinical notes, and progress notes.

(2) Informed consent, authorization, and election forms.

(3) Responses to medications, symptom management, treatments, and services.

(4) Outcome measure data elements, as described in § 418.54(e) of this subpart.

(5) Physician certification and recertification of terminal illness as required in § 418.22 and described in § 418.102(a) and § 418.102(b) respectively.

(6) Any advance directives as described in § 418.52(a)(3).

(b) *Standard: Authentication.* All entries must be legible, clear, complete, and appropriately authenticated and dated. All entries must be signed, and the hospice must be able to authenticate each handwritten and electronic signature of a primary author who has reviewed and approved the entry.

(c) *Standard: Protection of information.* The clinical record, its contents and the information contained therein must be safeguarded against loss or unauthorized use. The hospice must be in compliance with the Department's rules regarding personal health

information set out at 45 CFR parts 160 and 164.

(d) *Standard: Retention of records.* Patient clinical records must be retained for 5 years after the death or discharge of the patient, unless State law stipulates a longer period of time. If the hospice discontinues operation, hospice policies must provide for retention and storage of clinical records. The hospice must inform its State agency and its CMS Regional office where such clinical records will be stored and how they may be accessed.

(e) *Standard: Discharge or transfer of care.* (1) If the care of a patient is transferred to another Medicare/Medicaid-approved facility, the hospice must forward a copy of the patient's clinical record and the hospice discharge summary to that facility.

(2) If a patient revokes the election of hospice care, or is discharged from hospice because eligibility criteria are no longer met, the hospice must provide a copy of the clinical record and the hospice discharge summary of this section to the patient's attending physician.

(3) The hospice discharge summary must include—

(i) A summary of the patient's stay including treatments, symptoms and pain management;

(ii) The patient's current plan of care;

(iii) The patient's latest physician orders; and

(iv) Any other documentation that will assist in post-discharge continuity of care.

(f) *Standard: Retrieval of clinical records.* The clinical record, whether hard copy or in electronic form, must be made readily available on request by an appropriate authority.

§ 418.106 Condition of participation: Drugs, controlled drugs and biologicals, medical supplies, and durable medical equipment.

Medical supplies and appliances, as described in § 410.36 of this chapter; durable medical equipment, as described in § 410.38 of this chapter; and drugs and biologicals related to the palliation and management of the terminal illness and related conditions, as identified in the hospice plan of care, must be provided by the hospice while the patient is under hospice care.

(a) *Standard: Administration of drugs and biologicals.* (1) All drugs and biologicals must be administered in accordance with accepted hospice and palliative care standards of practice and according to the patient's plan of care.

(2) The interdisciplinary group, as part of the review of the plan of care, must determine the ability of the patient and/or family to safely self-administer drugs and biologicals.

(b) *Standard: Controlled drugs in the patient's home.* The hospice must have a written policy for tracking, collecting, and disposing of controlled drugs maintained in the patient's home. During the initial hospice assessment, the use and disposal of controlled substances must be discussed with the patient and family to ensure the patient and family are educated regarding the uses and potential dangers of controlled substances. The hospice nurse must document that the policy was discussed with the patient and family.

(c) *Standard: Use and maintenance of equipment and supplies.* (1) The hospice must follow manufacturer recommendations for performing routine and preventive maintenance on durable medical equipment. The equipment must be safe and work as intended for use in the patient's environment. Where there is no manufacturer recommendation for a piece of equipment, the hospice must develop in writing its own repair and routine maintenance policy. The hospice may use persons under contract to ensure the maintenance and repair of durable medical equipment.

(2) The hospice must ensure that the patient, where appropriate, as well as the family and/or other caregiver(s), receive instruction in the safe use of durable medical equipment and supplies. The patient, family, and/or caregiver must be able to demonstrate the appropriate use of durable medical equipment to the satisfaction of the hospice staff.

§ 418.108 Condition of participation: Short-term inpatient care.

Inpatient care must be available for pain control, symptom management, and respite purposes, and must be provided in a participating Medicare or Medicaid facility.

(a) *Standard: Inpatient care for symptom management and pain control.* Inpatient care for pain control and symptom management must be provided in one of the following:

(1) A Medicare-approved hospice that meets the conditions of participation for providing inpatient care directly as specified in § 418.110.

(2) A Medicare-participating hospital or a skilled nursing facility that also meets the standards specified in § 418.110(b) and (f) regarding 24-hour nursing services and patient areas.

(b) *Standard: Inpatient care for respite purposes.* Inpatient care for respite purposes must be provided by one of the following:

(1) A provider specified in paragraph (a) of this section.

(2) A Medicare/Medicaid approved nursing facility that also meets the standards specified in § 418.110(b) and (f).

(c) *Standard: Inpatient care provided under arrangements.* If the hospice has an arrangement with a facility to provide for short-term inpatient care, the arrangement is described in a legally binding written agreement that at a minimum specifies—

(1) That the hospice supplies the inpatient provider a copy of the patient's plan of care and specifies the inpatient services to be furnished;

(2) That the inpatient provider has established patient care policies consistent with those of the hospice and agrees to abide by the palliative care protocols and plan of care established by the hospice for its patients;

(3) That the hospice patient's inpatient clinical record includes a record of all inpatient services furnished, events regarding care that occurred at the facility, and that a copy of the inpatient clinical record and discharge summary is available to the hospice at the time of discharge;

(4) That the inpatient facility has identified a individual within the facility who is responsible for the implementation of the provisions of the agreement;

(5) That the hospice retains responsibility for arranging the training of personnel who will be providing the patient's care in the inpatient facility and that a description of the training and the names of those giving the training is documented; and

(6) That a way to verify that requirements in paragraphs (c)(1) through (c)(5) of this section have been met is established.

(d) *Standard: Inpatient care limitation.* The total number of inpatient days used by Medicare beneficiaries who elected hospice coverage in a 12-month period in a particular hospice may not exceed 20 percent of the total number of hospice days consumed in total by this group of beneficiaries.

(e) *Standard: Exemption from limitation.* Before October 1, 1986, any hospice that began operation before January 1, 1975, is not subject to the limitation specified in paragraph (d) of this section.

§ 418.110 Condition of participation: Hospices that provide inpatient care directly.

A hospice that provides inpatient care directly must demonstrate compliance with all of the following standards:

(a) *Standard: Staffing.* The hospice is responsible for ensuring that staffing for

all services reflects its volume of patients, their acuity, and the level of intensity of services needed to ensure that plan of care outcomes are achieved and negative outcomes are avoided.

(b) *Standard: Twenty-four hour nursing services.* The hospice facility must provide 24-hour nursing services that meet the nursing needs of all patients and are furnished in accordance with each patient's plan of care. Each patient must receive all nursing services as prescribed and must be kept comfortable, clean, well-groomed, and protected from accident, injury, and infection.

(c) *Standard: Physical environment.* The hospice must maintain a safe physical environment free of hazards for patients, staff, and visitors.

(1) *Safety management.* (i) The hospice must address real or potential threats to the health and safety of the patients, others, and property. The hospice must report a breach of safety to appropriate State and local bodies having regulatory jurisdiction and correct it promptly.

(ii) The hospice must take steps to prevent equipment failure and when a failure occurs, report it appropriate State and local bodies having regulatory jurisdiction and correct it promptly.

(iii) The hospice must have a written disaster preparedness plan in effect for managing the consequences of power failures, natural disasters, and other emergencies that would affect the hospice's ability to provide care. The plan must be periodically reviewed and rehearsed with staff (including non-employee staff) with special emphasis placed on carrying out the procedures necessary to protect patients and others.

(2) *Physical plant and equipment.* The hospice must develop procedures for managing the control, reliability, and quality of—

(i) The routine storage and prompt disposal of trash and medical waste;

(ii) Light, temperature, and ventilation/air exchanges throughout the hospice;

(iii) Emergency gas and water supply; and

(iv) The scheduled and emergency maintenance and repair of all equipment.

(d) *Standard: Fire protection.* (1) Except as otherwise provided in this section—

(i) The hospice must meet the provisions applicable to nursing homes of the 2000 edition of the Life Safety Code (LSC) of the National Fire Protection Association The Director of the Office of the Federal Register has approved the NFPA 101 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal register/code of federal regulations/ibr locations.html.* Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in the edition of the Code are incorporated by reference, CMS will publish a notice in the **Federal Register** to announce the changes.

(ii) Chapter 19.3.6.3.2, exception number 2 of the adopted edition of the LSC does not apply to hospice.

(2) In consideration of a recommendation by the State survey agency, CMS may waive, for periods deemed appropriate, specific provisions of the Life Safety Code which, if rigidly applied would result in unreasonable hardship for the hospice, but only if the waiver would not adversely affect the health and safety of patients.

(3) The provisions of the adopted edition of the Life Safety Code do not apply in a State if CMS finds that a fire and safety code imposed by State law adequately protects patients in hospices.

(4) Beginning March 13, 2006, a hospice must be in compliance with Chapter 9.2.9, Emergency lighting.

(5) Beginning March 13, 2006, Chapter 19.3.6.3.2, exception number 2 does not apply to hospices.

(6) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a hospice may place alcohol-based hand rub dispensers in its facility if—

(i) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities;

(ii) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;

(iii) The dispensers are installed in a manner that adequately protects against access by vulnerable populations; and

(iv) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00–1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any additional changes are made to this amendment, CMS will publish notice in the **Federal Register** to announce the changes.

(e) *Standard: Patient areas.* The hospice must provide a home-like atmosphere and ensure that patient areas are designed to preserve the dignity, comfort, and privacy of patients.

(1) The hospice must provide—

(i) Physical space for private patient and family visiting;

(ii) Accommodations for family members to remain with the patient throughout the night; and

(iii) Physical space for family privacy after a patient's death.

(2) The hospice must provide the opportunity for patients to receive visitors at any hour, including infants and small children.

(f) *Standard: Patient rooms.* (1) The hospice must ensure that patient rooms are designed and equipped for nursing care, as well as the dignity, comfort, and privacy of patients.

(2) The hospice must accommodate a patient and family request for a single room whenever possible.

(3) Each patient's room must—

(i) Be at or above grade level;

(ii) Contain a suitable bed and other appropriate furniture for each patient;

(iii) Have closet space that provides security and privacy for clothing and personal belongings;

(iv) Accommodate no more than two patients;

(v) Provide at least 80 square feet for each residing patient in a double room and at least 100 square feet for each patient residing in a single room; and

(vi) Be equipped with an easily-activated, functioning device accessible to the patient, that is used for calling for assistance.

(4) For an existing building, CMS may waive the space and occupancy requirements of paragraphs (f)(2)(iv) and (f)(2)(v) of this section for a period of time if it determines that—

(i) Imposition of the requirements would result in unreasonable hardship on the hospice if strictly enforced; or

jeopardize its ability to continue to participate in the Medicare program; and

(ii) The waiver serves the needs of the patient and does not adversely affect their health and safety.

(g) *Standard: Toilet/bathing facilities.* Each patient room must be equipped with, or conveniently located near, toilet and bathing facilities.

(h) *Standard: Plumbing facilities.* The hospice must—

(1) Have an adequate supply of hot water at all times; and

(2) Have plumbing fixtures with control valves that automatically regulate the temperature of the hot water used by patients.

(i) *Standard: Infection control.* The hospice must maintain an infection control program that protects patients, staff and others by preventing and controlling infections and communicable disease as stipulated in § 418.60.

(j) *Standard: Sanitary environment.* The hospice must provide a sanitary environment by following current standards of practice, including nationally recognized infection control precautions, and avoid sources and transmission of infections and communicable diseases.

(k) *Standard: Linen.* The hospice must have available at all times a quantity of clean linen in sufficient amounts for all patient uses. Linens must be handled, stored, processed, and transported in such a manner as to prevent the spread of contaminants.

(l) *Standard: Meal service and menu planning.* The hospice must furnish meals to each patient that are—

(1) Consistent with the patient's plan of care, nutritional needs, and therapeutic diet;

(2) Palatable, attractive, and served at the proper temperature; and

(3) Obtained, stored, prepared, distributed, and served under sanitary conditions.

(m) *Standard: Pharmaceutical services.* Under the direction of a qualified pharmacist, the hospice must provide pharmaceutical services such as drugs and biologicals and have a written process in place that ensures dispensing accuracy. The hospice will evaluate a patient's response to the medication therapy, identify adverse drug reactions, and take appropriate corrective action. Drugs and biologicals must be obtained from community or institutional pharmacists or stocked by the hospice. The hospice must furnish the drugs and biologicals for each patient, as specified in each patient's plan care. The use of drugs and biologicals must be provided in accordance with accepted professional principles and appropriate Federal, State, and local laws.

(n) *Pharmacist.* A licensed pharmacist must provide consultation on all aspects of the provision of pharmaceutical care in the facility, including ordering, storage, administration, disposal, and record keeping of drugs and biologicals.

(1) *Orders for medications.* (i) A physician as defined by section 1861(r)(1) of the Act, or a nurse practitioner in accordance with the plan of care and State law, must order all medications for the patient.

(ii) If the medication order is verbal or given by or through electronic transmission—

(A) The physician must give it only to a licensed nurse, nurse practitioner (where appropriate), pharmacist, or another physician; and

(B) The individual receiving the order must record and sign it immediately and have the prescribing physician sign it in accordance with State and Federal regulations.

(2) *Administration of medications.* Medications must be administered by only the following individuals:

(i) A licensed nurse, physician, or other health care professional in accordance with their scope of practice.

(ii) An employee who has completed a State-approved training program in medication administration.

(iii) The patient, upon approval by the attending physician.

(3) *Labeling of drugs and biologicals.* Drugs and biologicals must be labeled in accordance with currently accepted professional practice and must include appropriate accessory and cautionary instructions, as well as an expiration date (if applicable).

(4) *Drug management procedures.* (i) All drugs and biologicals must be stored in secure areas. All drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1976 must be stored in locked compartments within such secure storage areas. Only personnel authorized to administer controlled medications may have access to the locked compartments.

(ii) The hospice must keep current and accurate records of the receipt and disposition of all controlled drugs.

(iii) Any discrepancies in the acquisition, storage, use, disposal, or return of controlled drugs must be investigated immediately by the pharmacist and hospice administrator and where required reported to the appropriate State agency. A written account of the investigation must be made available to State and Federal officials.

(5) *Drug disposal.* Controlled drugs no longer needed by a patient must be disposed of in compliance with the hospice policy and in accordance with State and Federal requirements.

(o) *Standard: Seclusion and restraint.* (1) The patient has the right to be free from seclusion and restraint, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. The term restraint includes either a physical restraint or a drug that is being used as a restraint. A physical restraint is any manual method or physical or mechanical device, material or equipment attached or adjacent to the patient's body that he or she cannot easily remove, that restricts free movement of, normal function of, or normal access to one's body. A drug used as a restraint is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for a patient's medical or psychiatric condition. Seclusion is the confinement of a person alone in a room or an area where a person is physically prevented from leaving.

(2) Seclusion and restraint can only be used in emergency situations if needed to ensure the patient's or others' physical safety, and only if less restrictive interventions have been tried, determined and documented to be ineffective.

(3) The use of restraint and seclusion must be—

(i) Selected only when less restrictive measures have been found ineffective to protect the patient or others from harm;

(ii) Carried out in accordance with the order of a physician. The following will be superseded by more restrictive State laws:

(A) Orders for seclusion or restraints must never be written as a standing order or an as needed basis (that is, PRN).

(B) The hospice medical director or physician designee must be consulted as soon as possible if restraint or seclusion is not ordered by the hospice medical director or physician designee.

(C) A hospice medical director or physician designee must see the patient and evaluate the need for restraint or seclusion within 1 hour after initiation of this intervention.

(D) Each order for a physical restraint or seclusion must be in writing and limited to 4 hours for adults; 2 hours for children and adolescents ages 9 through 17; or 1 hour for patients under the age of 9. The original order may only be renewed in accordance with these limits for up to a total of 24 hours. After the original order expires, a physician must reassess the patient's need before

issuing another seclusion and restraint order.

(iii) In accordance with the interdisciplinary group and a written modification to the patient's plan of care;

(iv) Implemented in the least restrictive manner possible not to interfere with the palliative care being provided;

(v) In accordance with safe, appropriate restraining techniques;

(vi) Ended at the earliest possible time; and

(vii) Supported by medical necessity and the patient's response or outcome, and documented in the patient's clinical record.

(4) A restraint and seclusion may not be used simultaneously unless the patient is—

(i) Continually monitored face to face by an assigned staff member; or

(ii) Continually monitored by staff using video and audio equipment. Staff must be in immediate response proximity to the patient.

(5) The condition of the patient who is in a restraint or in seclusion must continually be assessed, monitored, and reevaluated by an assigned staff member.

(6) All staff who have direct patient contact must have ongoing education and training in the proper and safe use of seclusion and restraint application and techniques and alternative methods for handling behavior, symptoms, and situations that traditionally have been treated through the use of restraints or seclusion.

(7) The hospice must report to the CMS regional office any death that occurs while the patient is restrained or in seclusion, within 24 hours after a patient has been removed from restraint or seclusion.

§ 418.112 Condition of participation: Hospices that provide hospice care to residents of a SNF/NF, ICF/MR, or other facilities.

In addition to meeting the conditions of participation at § 418.10 through § 418.116, a hospice that provides hospice care to residents of a SNF/NF, ICF/MR, or other residential facility must abide by the following additional standards.

(a) *Standard: Resident eligibility, election, and duration of benefits.* Medicare patients receiving hospice services and residing in a SNF, NF, or other facility must meet the Medicare hospice eligibility criteria as identified in § 418.20 through § 418.30.

(b) *Standard: Professional management.* The hospice must assume full responsibility for professional management of the resident's hospice care, in accordance with the hospice conditions of participation and make any arrangements necessary for inpatient care in a participating Medicare/Medicaid facility according to § 418.100.

(c) *Standard: Core services.* A hospice must routinely provide all core services. These services include nursing services, medical social services, and counseling services. The hospice may contract for physician services as stated in § 418.64(a). A hospice may use contracted staff provided by another Medicare certified hospice to furnish core services, if necessary, to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances, as described in § 418.64.

(d) *Standard: Medical director.* The medical director and physician designee of the hospice must provide overall coordination of the medical care of the hospice resident that resides in an SNF, NF, or other facility. The medical director and physician designee must communicate with the medical director of the SNF/NF, the patient's attending physician, and other physicians participating in the provision of care for the terminal and related conditions to ensure quality care for the patient and family.

(e) *Standard: Written agreement.* The hospice and the facility must have a written agreement that specifies the provision of hospice services in the facility. The agreement must be signed by authorized representatives of the hospice and the facility before the provision of hospice services. The written agreement must include at least the following:

(1) The written consent of the patient or the patient's representative that hospice services are desired.

(2) The services that the hospice will furnish and that the facility will furnish.

(3) The manner in which the facility and the hospice are to communicate with each other to ensure that the needs of the patient are addressed and met 24 hours a day.

(4) A provision that the facility immediately notifies the hospice if—

(i) A significant change in the patient's physical, mental, social, or emotional status occurs;

(ii) Clinical complications appear that suggest a need to alter the plan of care;

(iii) A life threatening condition appears;

(iv) A need to transfer the patient from the facility and the hospice makes arrangements for, and remains responsible for, any necessary continuous care or inpatient care necessary related to the terminal illness; or

(v) The patient dies.

(5) A provision stating that the hospice assumes responsibility for determining the appropriate course of care, including the determination to change the level of services provided.

(6) An agreement that it is the facility's primary responsibility to furnish room and board.

(7) A delineation of the hospice's responsibilities, which include, but are not limited to, providing medical direction and management of the patient, nursing, counseling (including spiritual and dietary counseling), social work, bereavement counseling for immediate family members, provision of medical supplies and durable medical equipment, and drugs necessary for the palliation of pain and symptoms associated with the terminal illness, as well as all other hospice services that are necessary for the care of the resident's terminal illness.

(8) A provision that the hospice may use the facility's nursing personnel where permitted by law and as specified by the facility to assist in the administration of prescribed therapies included in the plan of care only to the extent that the hospice would routinely utilize the services of a hospice resident's family in implementing the plan of care.

(f) *Standard: Hospice plan of care.* A written plan of care must be established and maintained for each facility patient and must be developed by and coordinated with the hospice interdisciplinary group in consultation with facility representatives and in collaboration with the attending physician. All care provided must be in accordance with this plan. The plan must reflect the hospice's policies and procedures in all aspects and be based on an assessment of the patient's needs and unique living situation in the facility. It must include the patient's current medical, physical, social, emotional, and spiritual needs. Directives for management of pain and other symptoms must be addressed and updated as necessary to reflect the patient's status.

(1) The plan of care must identify the care and services that are needed and specifically identify which provider is responsible for performing the respective functions that have been agreed upon and included in the plan of care.

(2) The plan of care reflects the participation of the hospice, the facility, and the patient and family to the extent possible.

(3) In conjunction with representatives of the facility, the plan of care must be reviewed at intervals specified in the plan but no less often than every 14 calendar days.

(4) Any changes in the plan of care must be discussed among all caregivers and must be approved by the hospice before implementation.

(g) *Standard: Coordination of services.* The hospice must designate a member of its interdisciplinary group to coordinate the implementation of the plan of care with the representatives of the facility. The hospice must provide the facility with the following information:

(1) Plan of care.

(2) Patient or patient's representative hospice consent form and advance directives.

(3) Names and contact information for hospice personnel involved in hospice care of the patient.

(4) Instructions on how to access the hospice's 24-hour on-call system.

(5) Medication information specific to the patient

(6) Physician orders.

(h) *Standard: Transfer, revocation, or discharge from hospice care.* Requirements for discharge or revocation from hospice care, § 418.104(e), apply. Discharge from or revocation of hospice care does not directly impact the eligibility to continue to reside in an SNF, NF, ICF/MR, or other facility.

(i) *Standard: Orientation and training of staff.* Hospice staff must orient facility staff furnishing care to hospice patients in the hospice philosophy, including hospice policies and procedures regarding methods of comfort, pain control, symptom management, as well as principles about death and dying, individual responses to death, patient rights, appropriate forms, and record keeping requirements.

§ 418.114 Condition of participation: Personnel qualifications for licensed professionals.

(a) *General qualification requirements.* Except as specified in paragraph (c) of this section, all professionals who furnish services directly, under an individual contract, or under arrangements with a hospice, must be legally authorized (licensed, certified or registered) to practice by the State in which he or she performs such functions or actions, and must act only within the scope of his or her State license, or State certification, or registration. All personnel qualifications must be kept current at all times.

(b) *Personnel qualifications for physicians, speech-language pathologists, and home health aides.* The following qualifications must be met:

(1) *Physicians.* Physicians must meet the qualifications and conditions as defined in section 1861(r) of the Act and implemented at § 410.20 of this chapter.

(2) *Speech language pathologists.* Speech language pathologists must meet the qualifications specified in section 1861(ll)(1) of the Act. The individual must have a master's or doctoral degree in speech-language pathology and must—

(i) Be licensed as a speech-language pathologist by the State in which the individual furnishes such services, or,

(ii) In the case of an individual who furnishes services in a State which does not license speech-language pathologists, must:

(A) Have successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience),

(B) Have performed not less than 9 months of supervised full-time speech language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field, and successfully completed the Praxis National Examination in Speech-Language Pathology.

(3) *Home health aides.* Home health aides must meet the qualifications required by section 1891(a)(3) of the Act and implemented at § 484.75.

(c) *Personnel qualifications when no State licensing, certification or registration requirements exist.* If no State licensing laws, certification or registration requirements exist for the profession, the following requirements must be met:

(1) *Occupational therapist.* An occupational therapist must—

(i) Be a graduate of an occupational therapy curriculum accredited by the American Occupational Therapy Association, and be eligible for the National Registration Examination of the American Occupational Therapy Association; or

(ii) Have 2 years of appropriate experience as an occupational therapist, and have achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapist after December 31, 1977.

(2) *Occupational therapy assistant.* An occupational therapy assistant must—

(i) Meet the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or

(ii) Have 2 years of appropriate experience as an occupational therapy assistant, and have achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

(3) *Physical therapist.* A person who—

(i) Has graduated from a physical therapy curriculum approved by—

(A) The American Physical Therapy Association;

(B) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or

(ii) Prior to January 1, 1966—

(A) Was admitted to membership by the American Physical Therapy Association;

(B) Was admitted to registration by the American Registry of Physical Therapists; or

(C) Has graduated from a physical therapy curriculum in a 4-year college or university approved by a State department of education; or

(iii) Has 2 years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking qualification as a physical therapist after December 31, 1977; or

(iv) Was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

(v) If trained outside the United States—

(A) Has graduated, since 1928, from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy;

(B) Meets the requirements for membership in a member organization of the World Confederation for Physical Therapy.

(4) *Physical therapist assistant.* A person who—

(i) Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or

(ii) Has 2 years of appropriate experience as a physical therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a physical therapy assistant after December 31, 1977.

(5) *Registered nurse.* A graduate of a school of professional nursing.

(6) *Licensed practical nurse.* A person who has completed a practical nursing program.

(7) *Social worker.* A person who has a baccalaureate degree from a school of social work accredited by the Council on Social Work Education.

(d) *Standard: Criminal background checks.* The hospice must obtain a criminal background check on each hospice employee and contracted employee before employment at the hospice.

§ 418.116 Condition of participation: Compliance with Federal, State, and local laws and regulations related to health and safety of patients.

The hospice and its staff must operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations related to the health and safety of patients. If State or local law provides for licensing of hospices, the hospice must be licensed.

(a) *Standard: Licensure of staff.* Any persons who provide hospice services must be licensed, certified, or registered in accordance with applicable Federal, State and local laws.

(b) *Standard: Multiple locations.* Every hospice must comply with the requirements of § 420.206 of this chapter regarding disclosure of ownership and control information. All hospice satellite locations must be approved by CMS and licensed in accordance with State licensure laws, if applicable, before providing Medicare reimbursed services.

(c) *Standard: Laboratory services.* (1) If the hospice engages in laboratory testing other than assisting a patient in self-administering a test with an appliance that has been approved for that purpose by the FDA, the hospice must be in compliance with all applicable requirements of part 493 of this chapter.

(2) If the hospice chooses to refer specimens for laboratory testing to a reference laboratory, the reference laboratory must be certified in the appropriate specialties and subspecialties of services in accordance with the applicable requirements of part 493 of this chapter.

§ 418.200 [Amended]

6. Section 418.200 is amended by revising the reference ''§ 418.58'' to read ''§ 418.56''.

§ 418.202 [Amended]

7. In § 418.202, paragraph (e) is amended by revising the reference ''§ 418.98(b)'' to read ''§ 418.108(b)'' and paragraph (g) is amended by revising the reference ''§ 418.94'' to read ''§ 418.76''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 7, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 7, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–9935 Filed 5–26–05; 8:45 am]

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Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (May 11, 2005; 119 Stat. 231)

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