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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 04–109–1]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the swine health protection regulations by removing Kentucky from the list of States that permit the feeding of treated garbage to swine and adding it to the list of States that prohibit garbage feeding. This action is necessary to reflect changes in the status of Kentucky, and thereby facilitate the administration of the swine health protection regulations.

DATES: This rule is effective December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, National Surveillance Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1231; (301) 734–3752.

SUPPLEMENTARY INFORMATION:

Background

The swine health protection regulations in 9 CFR part 166 (referred to below as the regulations) were established under the Swine Health Protection Act (7 U.S.C. 3801 *et seq.*, referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

The regulations in § 166.15 categorize States according to the respective status of each with regard to the feeding of garbage to swine. Some States prohibit this activity, while other States permit the feeding of garbage to swine; these States are listed in § 116.15(a) and (b), respectively.

Under section 9 of the Act (7 U.S.C. 3808), the Animal and Plant Health Inspection Service (APHIS) is authorized to enter into cooperative agreements with State agencies, including States departments of agriculture, to more efficiently regulate the feeding of garbage to swine. These cooperative agreements may be entered into when APHIS determines that a State agency has adequate facilities, personnel, and procedures to assist the Department in the administration and enforcement of the regulations; the Department, however, retains primary enforcement under the Act. States that have entered into cooperative agreements to issue licenses under the regulations are listed in § 166.15(d).

Prior to this rulemaking, Kentucky was listed in § 166.15(b) as a State that permitted the feeding of treated garbage to swine and in § 166.15(d) as a State in a cooperative agreement with APHIS to issue licenses. However, Kentucky has repealed its laws permitting the feeding of treated garbage to swine. We are, therefore, removing Kentucky from the list in § 166.15(b) of States that permit the feeding of treated garbage to swine and are adding it to the list in § 166.15(a) of States that prohibit the feeding of garbage to swine. We are also removing Kentucky from the list in § 166.15(d) of States that issue licenses under cooperative agreements with APHIS.

Effective Date

We are taking this action to update our regulations with respect to changes that have already occurred in the laws of Kentucky regarding the feeding of garbage to swine. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary. We also find good cause for making this rule effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

The decision regarding whether or not a State will permit the feeding of garbage to swine is made at the State level. Since the State of Kentucky has notified APHIS that State law now prohibits the feeding of garbage to swine, this rule simply amends the regulations to reflect the State's decision.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 166

Animal diseases, Hogs, Reporting and recordkeeping requirements.

■ Accordingly, 9 CFR part 166 is amended as follows:

PART 166—SWINE HEALTH PROTECTION

■ 1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3801–3813; 7 CFR 2.22, 2.80, and 371.4.

§ 166.15 [Amended]

■ 2. Section 166.15 is amended as follows:

■ a. In paragraph (a), by adding, in alphabetical order, the word ''Kentucky,''.

■ b. In paragraph (b), by removing the word ''Kentucky,''.

■ c. In paragraph (d), by removing the word ''Kentucky,''.

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

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–26613 Filed 12–2–04; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE76

Small Business Size Regulations; Small Business Innovation Research Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is revising its small business size regulations regarding ownership and control of Small Business Innovation Research (SBIR) Program awardees. The final rule provides that an SBIR awardee must meet the following requirements: It must be a for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States (as the regulations currently require); or it must be a for-profit business concern that is at least 51% owned and controlled by another for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. This rule does not change the size standard requiring that an SBIR awardee, together with its affiliates, have no more than 500 employees. Because SBA received a large number of comments concerning ownership of SBIR Program participants by Venture Capital Companies, SBA will issue an Advanced Notice of Proposed Rulemaking seeking additional information this issue.

DATES: This rule is effective January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618, or Edsel Brown, Assistant Administrator for Technology, at (202) 205–6540. You may also e-mail questions to *sizestandards@SBA.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On June 4, 2003, the SBA published in the **Federal Register** (68 FR 33412) a proposed rule to modify the eligibility requirements for the SBIR Program. The proposed rule provided that small business concerns (SBCs), which are 100% owned and controlled by another concern, could receive SBIR awards so long as the concern that owned and controlled the awardee was at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. In addition, the SBIR awardee, including its affiliates (the parent company and any other affiliates), would have to meet the 500-employee size standard.

The SBA sought comments on its proposed rule together with alternatives that it considered. Below is a summary and discussion of the comments the SBA received, as well as a summary of the final rule.

Summary of Comments

The SBA received 164 comments on the proposed rule. Although the majority of the comments supported a change to the eligibility requirements for the SBIR Program, many of them recommended additional changes. The significant issues raised by the comments included: (1) Less than 100% ownership and control by one other concern; (2) majority ownership and control by large businesses; (3) ownership and control by more than one concern; (4) foreign ownership and control; (5) majority ownership and control by venture capital companies (VCCs); (6) ownership by Small Business Investment Companies (SBICs), employee stock option plans (ESOPs) and trusts; (7) joint ventures (JVs) in relation to the proposed rule; and (8) the 500-employee size standard.

Ownership by Other Concerns or Entities and Foreign Ownership

The SBA received several comments recommending a rule that would allow less than 100% ownership and control of an SBIR participant by another concern. Some of these comments stated that the level of ownership or control is not material to the overall success of the SBIR Program. Others contended that allowing less than 100% ownership or control is consistent with the Small Business Innovation Development Act (SBIDA) of 1982 (which can be found at *http://thomas.loc.gov/bss/d097/d097laws.html*) and its legislative history, and in fact furthers the SBIDA's intent. One commenter added that requiring 100% ownership would stifle investment from others.

Several commenters recommended a regulation that would allow an SBIR awardee to be owned and controlled by two or more other business concerns, which in turn are at least 51% owned and controlled by U.S. citizens or permanent resident aliens. Four commenters supported the idea of multiple corporate owners because it would permit one concern to ''spin off'' another, and then add one or more other corporate investors in the ''spin off.'' Other commenters recommended variations of the proposed rule, including: Allowing indirect ownership by U.S. citizens or permanent resident aliens, defining the term individuals to include U.S. corporations, and providing for a net worth test for the parent company.

Three commenters argued that allowing foreign ownership and control would be consistent with Federal procurement regulations. One commenter stated that it needed to go overseas to raise funds through the London Stock Exchange. Several commenters believed that rather than have a U.S. citizen or permanent resident alien ownership requirement, SBA should require the SBIR participant to have a base of operations in the United States, incorporate in the United States, employ U.S. citizens and/or pay taxes to the United States.

One commenter recommended allowing nonprofits to own and control more than 49% of the SBIR participant, but require the non-profit to license its technology exclusively to the start-up so that the non-profit cannot use the program to its advantage. Several commenters supported ownership and control of an SBIR participant by SBICs. One commenter stated that it believed the statutes and rules governing SBICs, as well as the SBA's regulatory authority over them, could provide adequate safeguards against abuse of the SBIR program by such larger businesses. One commenter did not support allowing more than 49% ownership by an SBIC. Other commenters supported ownership and control by trusts for estate/tax planning purposes and by Employee Stock Ownership Plans (ESOPs) for investment and employee incentive purposes.

Conversely, 50 commenters expressed concern that permitting another business concern to own an SBIR Program participant could permit large companies to participate in the SBIR

Program via a subsidiary. These commenters opposed the rule change and argued that business concerns owned by other business concerns have more money than most SBIR participants, which may have only 10 to 50 employees. In those instances, these smaller SBIR participants will be competing against larger participants (which, together with the parent company, meet the 500-employee size standard). These commenters did not believe this met the purpose and intent of SBIDA. Although several commenters supported allowing more than one business concern to own and control an SBIR awardee, many also likewise believed that the SBA must ensure that only true SBCs receive the SBIR award and directly benefit from the program.

SBA thoroughly reviewed each of the comments received and believes that allowing one business concern to own or control at least 51% of an SBIR participant, which is in turn at least 51% owned and controlled by U.S. citizens or permanent resident aliens, provides SBIR participants with the flexibility they need to leverage money and bring in other funding sources (such as SBICs) and yet remain small. Pursuant to the final rule, ownership of an SBIR awardee is limited to one of the two following ways: (1) The awardee must be at least 51% owned and controlled by citizens of, or permanent resident aliens in, the United States; or, (2) it must be at least 51% owned and controlled by one for-profit business concern that itself is at least 51% owned and controlled by citizens of, or permanent resident aliens in, the United States. With respect to the first eligibility criterion, if the SBIR awardee is at least 51% owned and controlled by citizens of, or permanent resident aliens in, the United States, other concerns (or entities such as non-profits) may participate in its ownership and control, but only so long as these concerns together do not own any more than 49% of the SBIR concern and do not control the concern as a result of their ownership interest. With respect to the second eligibility criterion, one for-profit business concern must have 51% or more ownership and control of an eligible SBIR awardee (if the awardee is not at least 51% owned and controlled by citizens of, or permanent resident aliens in, the United States). Other concerns (and entities such as non-profits) may have an ownership interest in the SBIR participant, but they are limited to 49%, individually or together.

The SBA believes that requiring that the business concern with the controlling interest be at least 51% owned and controlled by U.S. citizens or permanent resident aliens (note that SBA does not consider entities to be individuals or citizens or permanent resident aliens) supports the intent and purpose of SBIDA that the research and development (R&D) advances resulting from this program remain in this country and benefit the United States. Specifically, SBIDA was enacted because ''the rate of productivity increase in the United States ha[d] been well below that of all the leading industrial nations, most notably Japan and Germany. While this relative decline in American productivity [wa]s due to many factors, a major one [wa]s certainly the slowdown in our technological innovation.'' S. Rep. No. 194, 97th Cong., 1st Sess. 1 (1982). House Report No. 349, Part I, further stated that Federal support for R&D was concentrated in big businesses, laboratories, universities, and non-profit organizations. It was believed that this concentration of private R&D in a few large entities was contrary to the national interest and that small science and technology-based enterprises, thought of as the most innovative sector of the American economy, was excluded from effective participation. H.R. Rep. No. 349, 97th Cong., 1st Sess., pt. 1, at 9 (1981). The purpose of SBIDA was, and still is, to encourage small business participation in R&D to stimulate the American economy.

Because the purpose of the SBIR program is to increase the rate of productivity in the United States by increasing technological innovations, especially those innovations of SBCs here in the United States, the SBA believes that the legislative history of and purpose of SBIDA does not support more than 49% ownership by foreign investors or nonprofit institutions. The SBA notes that this rule does not preclude foreign or nonprofit investment; it merely limits the amount of investment. The SBA also notes that this regulation does not create the anomalous situation where an SBIR participant concern is owned and controlled by U.S. citizens or permanent resident aliens or a business concern that is owned and controlled by U.S. citizens or permanent resident aliens, but has a place of business overseas. The regulations, set forth at 13 CFR 121.105, specifically define the term ''concern'' or ''business concern'' to mean one that is organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. Therefore, in addition to meeting the 51% ownership and control requirements, the SBIR participant must meet this definition of ''concern'' or ''business concern.'' The SBA notes that this is not a change in policy; all business concerns eligible for the SBA assistance as a small business concern must meet this definition.

In addition, the SBA does not believe that allowing ownership by other concerns would allow large businesses to participate in the SBIR program. For purposes of the SBIR Program, an SBIR awardee, together with its affiliates, must be ''small'' for purposes of the program, and a concern, together with its affiliates, is deemed to be small only when it has no more than 500 employees. The SBA's Small Business Size Regulations set forth in 13 CFR 121.103 define affiliation with another business concern. According to § 121.103, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The SBA considers factors such as common ownership, common management and identity of interest (often found in members of the same family) to indicate affiliation. Although control exists when a party or parties has more than 50% ownership, it may also exist with considerably less than 50% ownership.

As a result of these affiliation rules, employees of businesses that have ownership interests in or control of an SBIR awardee may be counted toward the size of the SBIR awardee. Where one firm is a subsidiary of another, the parent and subsidiary are affiliates for size purposes and their employees would be aggregated in determining whether the subsidiary qualified as a small business. Thus, these rules would prevent ''large'' businesses from participating in the SBIR Program via a subsidiary.

Further, the SBA notes that under the former rules, a business concern could still own an SBIR participant, but was limited to 49% ownership. The new rule provides more flexibility in the ownership and control of an SBIR participant while still ensuring that only SBCs (those with not more than 500 employees, including affiliates) participate in the Program.

The SBA responded by letter or email to those commenters opposed to allowing businesses to own an SBIR awardee to clarify what it believed was a misunderstanding of the SBA's affiliation regulations and how those regulations apply to all of the SBA's programs, including the SBIR Program. In response, 15 of the 50 commenters

withdrew their opposition to the proposed rule and two stated that they remained opposed to the proposed rule.

Finally, the SBA would like to clarify that ESOPs can own SBIR awardees and the Agency has specifically addressed this issue in the final regulation to avoid any confusion. SBA has also amended the final rule to address the issue of ownership by trusts. The SBA understands that trusts are oftentimes established for tax reasons, where, as at least one commenter explained, an owner may establish a family trust for the benefit of her children. The commenter believed that such situations should be addressed in the regulations and the SBA agrees. For purposes of an ESOP, SBA will treat the plan members and trustees as owners. For purposes of a trust, SBA will treat the trustee and beneficiaries as owners of the SBIR awardee.

Ownership by VCCs

The SBA received 60 comments specifically addressing whether VCCs should own and control 51% or more of an SBIR awardee. Several commenters argued that VCCs should be allowed to own and control 51% or more of an SBIR awardee because small innovative business concerns, especially those in the biotechnology field, need this capital investment. In addition, because many of these VCCs have institutional investors, these commenters did not believe that there should be a U.S. citizen ownership and control test for such VCC-backed business concerns. As a result, some commenters recommended disregarding VCC ownership altogether when determining the 51% or more ownership and control requirement or suggested that the SBA deem U.S. investment companies to be individuals and U.S. citizens for purposes of this rule. In addition, some argued that the SBA should modify its affiliation provision to disregard affiliation with such VCCs.

Meanwhile, 20 commenters opposed allowing concerns majority owned and controlled by VCCs to be eligible for the SBIR Program. These commenters believe that such concerns do not need further funding—such as Government funding through an SBIR award—because they already receive help from the VCC. In addition, these commenters expressed concern about the impact on existing SBCs in seeking R&D support if concerns that are majority owned and controlled by VCCs were allowed to obtain SBIR funding awards.

The SBA notes that this final rule makes no distinction between a VCC and other for-profit entities. This rule allows a VCC to own and control an SBIR awardee, as long as the VCC is itself at least 51% owned and controlled by U.S. citizens and permanent resident aliens and the SBIR awardee, together with its affiliates, meets the 500-employee size standard. However, the specific nature of the relationship between a VCC or other investment vehicle, which is in turn more than 50% owned by institutional investors, with an SBIR participant is a broader policy question than SBA sought to address with the proposed rule. When VCCs have control of a firm in which they invest, they are considered affiliated with that firm under current rules (§ 121.103, ''What is affiliation?''), just as any other business entity would be if it had ownership or control. Business concerns owned and controlled by VCCs with institutional investors would be affiliated with those VCCs and institutional investors and, thus, may not meet the SBIR Program's 500-employee size standard. The SBA stated in the proposed rule that it was not changing the rule that a concern, together with its affiliates, must meet the 500 employee small business size standard.

Because of the large number of comments SBA received on the issue of affiliation for VCCs, the SBA believes that it warrants further consideration. SBA will issue an Advance Notice of Proposed Rulemaking seeking additional information on this issue. This action ensures that the small business community is aware of SBA's consideration of a significant change to the eligibility criteria for the SBIR Program and that it has an opportunity to provide information to assist SBA with the evaluation of the issue.

The Effects of the Rule on Joint Ventures (JVs)

Two commenters questioned whether this rule would comply with existing provisions on JVs as set forth in the SBA's SBIR Policy Directive and whether JVs must have a separate Employer Identification Number (EIN). First, the SBA notes that this final rule does not effect the eligibility of JVs for SBIR awards as set forth in the SBA's SBIR Policy Directive, 67 FR 60072 (Sept. 24, 2002), which was promulgated pursuant to notice and comment rulemaking. SBA notes that in addition to amending the SBIR Policy Directive on this issue, it proposed an amendment to 13 CFR 121.702(a) in 67 FR 70339 (Nov. 22, 2002) to address JVs in the SBIR Program. SBA received no comments on that proposal, which was identical to the rule set forth in the SBIR Policy Directive. As a result, the SBA is amending the regulation to address this issue. The final regulation, like the Policy Directive, states that joint ventures are eligible for an SBIR award if each entity that is part of the venture meets the SBIR ownership and control requirements.

Second, and with respect to the EIN number, this issue was addressed in the preamble to the final SBIR Policy Directive. For purposes of the SBIR Program, a JV is an association of concerns with interests in any degree or proportion by way of a contract, express or implied, consorting to engage in and carry out a specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. Further, for purposes of the SBIR Program, a JV is viewed as a business entity in determining power to control its management. Therefore, a JV can have its own EIN, but it is not required to have one, so long as the purpose of the JV is to engage in and carry out a specific business venture.

The 500-Employee Size Standard

A few commenters recommended that the SBA amend the SBIR program size standard from 500 employees to 250 or even 50 employees. One commenter maintained that companies with more than 250 employees generate $15 million to $20 million annually while another commenter believed that companies with 500 employees generate $50 million in sales. Both commenters argued that these companies should pursue standard government grants and contracts, leaving SBIR funds for smaller companies. One commenter maintained that the value of the SBIR Program is greatest for the smallest entities, such as those with less than 50 employees, who cannot fund innovations from their own profits.

The proposed rule specifically stated that the SBA was not amending the size standard for the SBIR Program and therefore the SBA did not propose any alternate size standards. If the SBA determines that it is necessary to amend the size standard for the SBIR Program, it will do so through a separate rulemaking action, which includes proposing a standard for public comment.

Time of Eligibility

The SBA received one comment on its proposal to revise the first sentence of § 121.702 by changing ''To be eligible to compete for award * * *'' to read ''To be eligible for award * * *.'' With this change, an SBIR awardee would not need to meet the eligibility requirements

when it submits its proposal. Rather, the awardee would need to be eligible at the time of the award. According to the commenter, this change would allow large businesses to use resources to apply for SBIR funding and then establish a small business for purposes of the award.

The SBA disagrees with this comment. First, the SBA has been issuing size determinations for SBIR participants at the time of award for several years and is not aware of any instances where a large business has become ''small'' for purposes of an SBIR award. The SBA believes that, generally, this process proposed by the commenter would be too time and money consuming.

Second, the reason for the departure from the time of self-certification with the proposal submission requirement applicable to other programs is the concern that potential SBIR entrepreneurs often are working at large concerns or non-profit institutions (*e.g.*, universities) at the time of their initial proposal and, thus, would be precluded from the SBIR Program by a ''time of offer'' rule. These offerors typically leave their position with the affiliated entity upon approval of their proposal and prior to award. Therefore, the SBA is promulgating the final rule as proposed.

The SBA's Decision

In sum, this final rule adopts a modification to the SBA's proposed rule. Although the SBA had proposed to allow another concern to own an SBIR awardee, the proposal required 100% ownership and control. Based on comments received and discussed above, the SBA believes that its proposal was unnecessarily limiting. Therefore, without modifying the size standard requiring that an SBIR awardee, together with its affiliates, have no more than 500 employees, the SBA is revising § 121.702 to allow an SBIR funding awardee to be either:

(1) A for-profit business concern, as defined in § 121.105, that is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; or,

(2) A for-profit business concern, as defined in § 121.105, that is at least 51% owned and controlled by another for-profit business concern, as defined in § 121.105, that is itself at least 51% owned and controlled by individuals who are citizens of, or permanent resident aliens in, the United States.

This final rule also adopts the SBA's proposal to revise the first sentence of § 121.702 by changing ''To be eligible to compete for award * * *'' to read ''To be eligible for award * * *.'' With this change, an SBIR awardee does not need to meet the eligibility requirements when it submits its proposal. Rather, the awardee must be eligible at the time of the award.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action for purposes of Executive Order 12866. Small business size standards determine what businesses are eligible for Federal small business programs. This rule does not effect small business size standards, but may effect the number of awards to different small businesses under the SBIR Program. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800. For purposes of Executive Order 12988, the SBA has determined that this rule has been drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule does not impose new reporting or recordkeeping requirements, other than those now required of the SBA and Federal agencies that request R&D proposals under the SBIR Program. The SBA's Final Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Need for This Regulatory Action

The SBA's experience over the last several years led it to believe that it should reconsider its policy on eligibility for SBIR awardees. The SBA believes that the former regulation was unnecessarily restrictive. The revised rule now allows small businesses owned and controlled by no more than one other for-profit business concern to participate in the SBIR Program. The SBA believes this regulation will increase the number of SBCs eligible for the SBIR Program and therefore increase the number and quality of technological innovations by SBCs. As a result, this rule, despite the fact it broadens the eligibility requirements for SBIR awardees, is still consistent with SBIDA and its legislative history.

The mission of SBA is to aid and assist small businesses through a variety of financial, procurement, business development and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of what it means to be a small business and define what small businesses are eligible for various Federal Government programs. The Small Business Act (15 U.S.C. 632(a)) delegates broad responsibility for establishing small business definitions to the SBA Administrator.

This rule is consistent with the SBA's statutory mandate to assist small business. This action will promote the Administrator's objectives to help individual small businesses succeed through fair and equitable access to capital and credit. Reviewing and modifying the SBA's Small Business Size Regulations, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

2. Potential Benefits and Costs of This Regulation

Small R&D concerns that will become eligible for SBIR Program awards are the primary beneficiaries of this rule. Specifically, benefits will flow to concerns that were ineligible for SBIR awards solely because they were owned and controlled by other concerns, rather than natural persons. In addition, companies owned and controlled by SBIR participants, which were previously ineligible to participate in the SBIR Program, are now eligible.

In the proposed rule, the SBA could not predict with confidence the distributional impact of the rule. The SBA believed that there would be about 50 to 100 concerns that might benefit, based on information that, in the past, agencies have not awarded approximately 50 to 100 SBIR proposals as a result of the former ownership restrictions. Although the SBA specifically requested comments on this issue, commenters did not offer estimates, but generally agreed with the SBA's estimates.

In fiscal year 2002, there were approximately 5,000 SBIR awards that received approximately $1.5 billion in funding. Therefore, if 100 newly eligible firms win SBIR awards, the SBA estimates that approximately $30 million could be awarded annually to newly eligible concerns as a result of this rule.

Federal Government agencies with SBIR Programs also benefit from this rule because it enables them to tap the resources of more small innovative

firms, facilitating the conversion of federally funded research results into commercially viable products and services. In keeping with Congress' intent, the rule further helps Federal agencies to meet their mandate to assist SBCs.

The Federal Government will incur no additional costs as a result of this final rule. By slightly expanding the pool of eligible concerns, the rule makes an already competitive program even more competitive, which can increase the quality of the projects funded. The rule will have no impact on the number of awards given or on the amount of funds available for the program.

The SBA estimated in the proposed rule that there would be relatively few distributional effects if it adopted the rule. In the past, agencies have not awarded approximately 50 to 100 SBIR proposals as a result of the former ownership restrictions. The agencies did not issue an award to either small businesses or other than small businesses. Again, as stated above, the SBA could not accurately determine how many concerns might become eligible for these awards because there are no data to support an estimate of the distributional effects, but the SBA believed it could be no more than 100 awards made to newly eligible concerns. Commenters did not dispute this estimate, and one stated its assumption that the SBA's estimate of newly eligible concerns was correct.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, the SBA has determined that this rule may have a significant economic effect on a substantial number of small entities. The SBA estimates that an additional 50 to 100 small concerns could become eligible for the SBIR Program and obtain approximately $30 million in funding agreements. Immediately below, the SBA sets forth a Final Regulatory Flexibility Analysis of this rule providing the following: (1) The need for and objective of the rule; (2) a description and estimate of the number of small concerns to which the rule will apply; (3) projected reporting, recordkeeping, and other compliance requirements of the rule; (4) relevant Federal rules that may duplicate, overlap or conflict with the rule; and (5) alternatives to allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities.

(1) Need and Objective of the Rule

The SBA believes that several SBCs were precluded from participating in the SBIR Program under the prior rule, solely because of their ownership structure. Participating SBIR agencies have not awarded 50 to 100 SBIR proposals annually because there were no meritorious and feasible proposals from qualified concerns. In those cases, the SBA believes the SBCs were qualified except for the fact that they did not meet the ownership criteria.

One purpose of the SBIR Program is to increase the share of the Federal R&D budget awarded to SBCs. In addition, according to SBIDA's legislative history, SBCs have difficulty competing with not-for-profit entities. Allowing concerns that are at least 51% owned and controlled by a single for-profit business concern that is itself at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States is consistent with the objectives of the SBIR Program.

(2) Description and Estimate of the Number of Small Entities to Which the Rule Applies

The SBA could not precisely determine how many concerns would become eligible as a result of the proposed rule, if adopted, because it had no data on how many wholly owned subsidiaries there are in the United States. In fiscal year 2002, there were about 5,000 annual SBIR awards for approximately $1.5 billion, less than 2% of which are multiple awards. The SBA believes that between 50 to 100 concerns will become eligible under this rule, as discussed above.

The SBA believes that the additional eligible concerns will not have a significant impact on existing small concerns. While there are approximately 5,000 annual SBIR awards, over 98% are awarded to concerns that receive no other awards during the year. That is, there are approximately 4,900 awards in any given year to approximately 4,900 different concerns. The SBA estimates that, on average, three concerns compete for any given award. Therefore, there are about 15,000 concerns seeking SBIR awards. The SBA does not believe that an additional 100 competitors, about 0.7%, adds significant competition for SBIR awards.

The SBA recognizes that newly eligible firms might be viewed as competition for other small businesses competing for SBIR awards. However, newly eligible firms under this rule must, like other participants, meet the 500-employee size standard. This rule does not increase the population of eligible firms by allowing other than small business to participate; it only adds SBCs with different ownership structures. Therefore, newly eligible concerns competing for SBIR awards do not have the benefits that generally accrue to larger concerns. While there will be a small increase in the number of concerns competing, the newly eligible firms will not be more competitive due to their size.

Participating agencies have no limit to the number and amount of awards they may make in a given fiscal year. The agencies have goals and objectives, but they are not limited to those levels. This rule opens up opportunities for more small R&D concerns to participate in the SBIR Program.

(3) Projected Reporting or Recordkeeping, or Other Compliance Requirements of This Rule

This rule does not impose any additional reporting, recordkeeping or other compliance requirements on small entities for the SBA's programs. It also does not create additional costs on a business to determine whether or not it qualifies as a small business. A business need only examine existing business information to determine its eligibility, such as its Federal tax returns. In addition, this rule does not impose any new information collection requirements from the SBA, which would require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

(4) Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Rule

The SBA's Small Business Size Regulations may in some instances overlap other Federal rules that use the SBA's small business size standards to define a small business. However, this rule is limited to a single program and does not conflict with other regulatory requirements, or any small business program, other than the SBIR Program's Policy Directive, which the SBA will amend to comply with this rule.

(5) Alternatives To Allow the Agency To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities

In its proposed rule, the SBA proposed only to extend eligibility to concerns that were owned 100% by another concern. The SBA also indicated that it had considered an alternative that would permit concerns less than wholly owned or controlled by other concerns, or owned or controlled by more than one other concern, to be eligible for SBIR awards. Based on comments received to the proposed rule, the SBA adopted the alternative that would allow an SBIR participant to be less than 100% owned and

controlled by another concern. However, the rule states that the business concern with at least 51% ownership and control of the SBIR awardee must be at least 51% owned and controlled by citizens or permanent resident aliens in the United States. The SBA believes that this regulation provides flexibility with respect to investments while ensuring that small R&D concerns obtain SBIR awards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the Preamble, the SBA is amending 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for Part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 636(b), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

■ 2. Revise § 121.702 to read as follows:

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible for award of funding agreements in the SBA's Small Business Innovation Research (SBIR) program, a business concern must meet the requirements of paragraphs (a) and (b) below:

(a) *Ownership and control.*

(1) An SBIR awardee must (i) be a concern which is at least 51% owned and controlled by one or more individuals who are citizens of the United States, or permanent resident aliens in the United States; or

(ii) Be a concern which is at least 51% owned and controlled by another business concern that is itself at least 51% owned and controlled by individuals who are citizens of, or permanent resident aliens in the United States; or

(iii) Be a joint venture in which each entity to the venture must meet the requirements set forth in either paragraphs (a)(1)(i) or (a)(1)(ii) of this section.

(2) If an Employee Stock Option Plan owns all or part of the concern, SBA considers each stock trustee and plan member to be an owner.

(3) If a trust owns all or part of the concern, SBA considers each trustee and trust beneficiary to be an owner.

(b) *Size.* An SBIR awardee, together with its affiliates, not have more than 500 employees.

Dated: November 29, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–26608 Filed 12–2–04; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19325; Airspace Docket No. 04–ACE–54]

Modification of Class E Airspace; Dodge City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Dodge City, KS.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 19, 2004 (69 FR 61439) and subsequently published corrections to the direct final rule on October 29, 2004 (69 FR 63032) and November 22, 2004 (69 FR 67811). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 23, 2004.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26670 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7638]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, 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 below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

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 Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs 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, Federal Emergency Management Agency, 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 on knowledge of changed conditions or 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 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.

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 base flood elevations 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 follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Sebastian (Case No.: 03–06–847P).	City of Fort Smith.	Sept. 15, 2004, Sept. 22, 2004, *Southwest Times Record*.	The Honorable C. Ray Baker, Jr., Mayor, City of Fort Smith, 4420 Victoria Drive, Fort Smith, AR 72904.	Sept. 27, 2004	055013
Pulaski (Case No.: 04–06–1607P).	City of Jacksonville.	July 14, 2004, July 21, 2004, *Jacksonville Patriot*.	The Honorable Tommy Swaim, Mayor, City of Jacksonville, P.O. Box 126, Jacksonville, AR 72076–0126.	July 27, 2004	050180
Pulaski (Case No.: 03–06–697P).	City of Little Rock.	Sept. 15, 2004, Sept. 22, 2004, *Little Rock Free Press*.	The Honorable Jim Dailey, Mayor, City of Little Rock, 500 West Markham, Room 203, Little Rock, AR 72201.	Dec. 22, 2004	050181
Pulaski (Case No.: 03–06–2526P).	City of Little Rock.	Aug. 4, 2004, Aug. 11, 2004, *Little Rock Free Press*.	The Honorable Jim Dailey, Mayor, City of Little Rock, 500 West Markham, Room 203, Little Rock, AR 72201.	Nov. 10, 2004	050181
Pope (Case No.: 04–06–853P).	City of Russellville.	Sept. 3, 2004, Sept. 10, 2004, *The Courier*.	The Honorable Raye Turner, Mayor, City of Russellville, P.O. Box 428, Russellville, AR 72811.	Aug. 11, 2004	050178
Illinois:					
Will (Case No.: 03–05–5771P).	Village of Bolingbrook.	Aug. 20, 2004, Aug. 27, 2004, *The Bolingbrook Sun*.	The Honorable Roger Claar, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	July 27, 2003	170812
Cook (Case No.: 03–05–3989P).	Unincorporated Areas.	June 24, 2004, July 1, 2004, *Orland Township Messenger*.	Mr. John H. Stroger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, 5th Floor, Chicago, IL 60602.	Sept. 30, 2004	170054

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Will (Case No.: 04–05–0768P).	Village of Frankfort.	July 22, 2004, July 29, 2004, *The Star*.	The Honorable Raymond E. Rossi, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423.	June 29, 2004	170701
McHenry (Case No.: 04–05–0758P).	City of Marengo	Aug. 24, 2004, Aug. 31, 2004, *The Northwest Herald*.	The Hon. Dennis Hammortree, Mayor, City of Marengo, 132 East Prairie Street, Marengo, IL 60152.	Nov. 30, 2004	170482
Cook (Case No.: 03–05–3989P).	Village of Orland Park.	June 24, 2004, July 1, 2004, *Orland Township Messenger*.	The Honorable Daniel McLaughlin, Mayor, Village of Orland Park, Village Hall, 14700 South Ravinia Avenue, Orland Park, IL 60462.	Sept. 30, 2004	170140
Will County (Case No.: 04–05–0769P).	Village of Plainfield.	Sept. 22, 2004, Sept. 29, 2004, *The Enterprise*.	The Honorable Richard Rock, Mayor, Village of Plainfield, 24000 West Lockport Street, Plainfield, IL 60544.	Sept. 9, 2004	170771
Will (Case No.: 04–05–1634P).	Village of Plainfield.	June 23, 2004, June 30, 2004, *The Enterprise*.	The Honorable Richard Rock, Mayor, Village of Plainfield, 24000 West Lockport Street, Plainfield, IL 60544.	July 12, 2004	170771
Will County (Case No.: 03–05–1850P).	Village of Shorewood.	Sept. 14, 2004, Sept. 21, 2004, *The Herald News*.	The Hon. Richard E. Chapman, Village President, Village of Shorewood, 903 West Jefferson Street, Shorewood, IL 60431.	Aug. 27, 2004	170712
Cook (Case No.: 03–05–1457P).	Village of Tinley Park.	July 22, 2004, July 29, 2004, *The Courier News*.	The Honorable Edward J. Zabrocki, Mayor, Village of Tinley Park, 16250 South Oak Park Avenue, Tinley Park, IL 60477.	July 30, 2004	170169
Will (Case No.: 04–05–1634P).	Unincorporated Areas.	June 23, 2004, June 30, 2004, *The Enterprise*.	Mr. Joseph Mikan, Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	July 12, 2004	170695
Will County (Case No.: 03–05–1850P).	Unincorporated Areas.	Sept. 14, 2004, Sept. 21, 2004, *The Herald News*.	The Honorable Joseph Mikan, Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Aug. 27, 2004	170695
Indiana:					
Johnson (Case No.: 04–05–0097P).	City of Greenwood.	Aug. 4, 2004, Aug. 11, 2004, *The Daily Journal*.	The Honorable Charles Henderson, Mayor, City of Greenwood, 2 North Madison Avenue, Greenwood, IN 46142.	July 12, 2004	180115
Marion (Case No.: 03–05–3389P).	City of Indianapolis.	Aug. 20, 2004, Aug. 27, 2004, *The Indianapolis Star*.	The Honorable Barthen Peterson, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, City-County Building, Indianapolis, IN 46204.	Nov. 26, 2004	180159
Kansas					
Saline (Case No.: 04–07–037P).	City of Salina	June 23, 2004, June 30, 2004, *The Salina Journal*.	The Honorable Allan E. Jilka, Mayor, City of Salina, 300 West Ash Street, P.O. Box 736, Salina, KS 67402.	Sept. 29, 2004	200319
Saline (Case No.: 04–07–037P).	Unincorporated Areas.	June 23, 2004, June 30, 2004, *The Salina Journal*.	Ms. Sherri Barragree, Chairman, Saline County Comm., 300 West Ash Street, Room 211, Salina, KS 67401.	Sept. 29, 2004	200316
Sedgwick (Case No.: 03–07–878P).	City of Wichita ..	June 23, 2004, June 30, 2004, *The Wichita Eagle*.	The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall—1st Floor, 455 North Main Street, Wichita, KS 67202.	June 17, 2004	200328
Maryland:.					
Montgomery (Case No.: 03–03–133P).	City of Rockville	Aug. 11, 2004, 18, 2004, *The Montgomery Journal*.	The Honorable Larry Giammo, Mayor, City of Rockville, Rockville City Hall, 111 Maryland Avenue, Rockville, MD 20850.	Nov. 17, 2004	240051
Michigan:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Genesee (Case No.: 03–05–2569P).	City of Grand Blanc.	July 22, 2004, July 29, 2004, *The Flint Journal*.	Mr. Randall Byrne, City Manager, City of Grand Blanc, 203 East Grand Blanc Road, Grand Blanc, MI 48439.	June 29, 2004	260255
Oakland (Case No.: 03–05–5184P).	City of Novi	July 15, 2004, July 22, 2004, *The Novi News*.	The Honorable Lou Casordas, Mayor, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375.	Aug. 2, 2004	260175
Minnesota:					
Anoka (Case No.: 03–05–3380P).	City of Blaine	Aug. 13, 2004, Aug. 20, 2004, *Blaine-Spring Lake Park Life*.	The Honorable Tom Ryan, Mayor, City of Blaine, 12147 Radisson Road NE, Blaine, MN 55449.	July 26, 2004	270007
Isanti (Case No.: 03–05–3978P).	Unincorporated Areas.	July 7, 2004, July 14, 2004, *Isanti County News*.	Mr. George Larson, Chairman, Isanti County Board of Commissioners, Isanti County Courthouse, 555 18th Avenue, SW, Cambridge, MN 55008.	July 21, 2004	270197
Missouri:					
Clay (Case No.: 02–07–552P).	Village of Glenaire.	July 21, 2004, July 28, 2004, *The Liberty Tribune*.	The Honorable Bryan Smith, Mayor, City of Glenaire, P.O. Box 766, Glenaire, MO 64068.	Oct. 27, 2004	290092
Jefferson (Case No.: 04–07–035P).	Unincorporated Areas.	June 23, 2004, June 30, 2004, *Jefferson County Journal*.	Mr. Mark Mertens, Presiding Commissioner, Jefferson County, P.O. Box 100, County Courthouse, Hillsboro, MO 63050–0100.	Sept. 29, 2004	290808
Clay (Case No.: 02–07–552P).	City of Liberty ...	July 21, 2004, July 28, 2004, *The Liberty Tribune*.	The Honorable Stephen Hawkins, Mayor, City of Liberty, 611 Lancelot Drive, Liberty, MO 64069.	Oct. 27, 2004	290096
New Mexico:					
Bernalillo (Case No.: 04–06–1193P).	City of Albuquerque.	July 22, 2004, July 29, 2004, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	July 9, 2004	350002
Bernalillo (Case No.: 04–06–1193P).	Unincorporated Areas.	July 22, 2004, July 29, 2004, *Albuquerque Journal*.	Mr. Tom Rutherford, Chairman, Bernalillo County Commission, One Civic Plaza NW, Albuquerque, NM 87102.	July 9, 2004	350001
Sandoval (Case No.: 03–06–681P).	Town of Bernalillo.	June 17, 2004, June 24, 2004, *Albuquerque Journal*.	The Honorable Charles Aguilar, Mayor, Town of Bernalillo, P.O. Box 638, Bernalillo, NM 87004.	June 4, 2004	350056
Sandoval (Case No.: 03–06–681P).	City of Rio Rancho.	June 17, 2004, June 24, 2004, *The Observer*.	The Honorable Jim Owen, Mayor, City of Rio Rancho, 3900 Southern Boulevard, Rio Rancho, NM 87124.	June 4, 2004	350146
Ohio:					
Licking (Case No.: 04–05–0765P).	Unincorporated Areas.	July 19, 2004, July 26, 2004, *The Advocate*.	Mr. Albert Ashbrook, President, Licking County, Board of Commissioners, 20 South Second Street, Newark, OH 43055.	Aug. 2, 2004	390328
Shelby (Case No.: 04–05–2336P).	Unincorporated Areas.	Aug. 12, 2004, Aug. 19, 2004, *The Sidney Daily News*.	Mr. Larry Klainhans, Chairman, Shelby County Board of Commissioners, 129 East Court Street, Suite 100, Sidney, OH 45365.	July 22, 2004	390503
Oklahoma					
Mayes (Case No.: 04–06–575P).	Unincorporated Areas.	Aug. 3, 2004, Aug. 10, 2004, *The Daily Times*.	Mr. Jim Montgomery, Chairperson, Mayes County Board of Commissioners, P.O. Box 95, County Courthouse, Pryor, OK 74362–0095.	July 8, 2004	400458
Tulsa (Case No.: 04–06–1737P).	City of Owasso	Aug. 12, 2004, Aug. 19, 2004, *Owasso Reporter*.	The Honorable Susan Kimball, Mayor, City of Owasso, P.O. Box 180, Owasso, OK 74055.	Nov. 18, 2004	400210
Payne (Case No.: 03–06–840P).	Unincorporated Areas.	July 21, 2004, July 28, 2004, *The News Press*.	Ms. Gloria Hesser, Payne County Commissioner, 2600 S. Main Street, Suite C, Stillwater, OK 74074.	Oct. 27, 2004	400493

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Payne (Case No.: 03–06–840P).	City of Stillwater	July 21, 2004, July 28, 2004, *The News Press*.	The Honorable Bud Lacy, Mayor, City of Stillwater, P.O. Box 1449, Stillwater, OK 74076.	Oct. 27, 2004	400493
Tulsa (Case No.: 03–06–1946P).	City of Tulsa	Aug. 18, 2004, Aug. 25, 2004, *Tulsa World*.	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	Nov. 24, 2004	405381
Texas					
Brazoria (Case No.: 03–06–2336P).	City of Angleton	June 30, 2004, July 7, 2004, *The Facts*.	The Honorable L.M. Sebesta, Jr., Mayor, City of Angleton, 2372 East Highway 35, Angleton, TX 77515.	Oct. 6, 2004	480064
Tarrant (Case No.: 03–06–2875P).	City of Bedford	Aug. 24, 2004, Aug. 31, 2004, *The Star Telegram*.	The Honorable R.D. Hurt, Mayor, City of Bedford, 200 Forest Ridge Drive, Bedford, TX 76021.	Aug. 27, 2004	480585
Brazoria (Case No.: 03–06–2336P).	Unincorporated Areas.	June 30, 2004, July 7, 2004, *The Facts*.	The Honorable John Willy, Judge, Brazoria County, 111 East Locust Street, Angleton, TX 77515.	Oct. 6, 2004	485458
Dallas (Case No.: 04–06–228P).	City of Carrollton	July 28, 2004, Aug. 4, 2004, *The Carrollton Leader*.	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006.	July 15, 2004	480167
Tarrant (Case No.: 03–06–1204P).	City of Colleyville.	Sept. 2, 2004, Sept. 9, 2004, *The N.E. Tarrant County Morning News*.	The Honorable Joe Hocutt, Mayor, City of Colleyville, P.O. Box 185, Colleyville, TX 76034–0185.	Dec. 9, 2004	480590
Comal (Case No.: 04–06–127P).	Unincorporated Areas.	June 23, 2004, June 30, 2004, *Comal County Beacon*.	The Honorable Danny Scheel, Judge, Comal County, 199 Main Plaza, New Braunfels, TX 78130.	June 4, 2004	485463
Dallas (Case No.: 03–06–1942P).	City of Dallas	Aug. 24, 2004, Aug. 31, 2004, *Dallas Morning News*.	The Honorable Laura Miller, Mayor, City of Dallas, Dallas City Hall, 1500 Marilla Street, Room 5EN, Dallas, TX 75201–6390.	Nov. 30, 2004	480171
Denton (Case No.: 04–06–664P).	City of Denton ..	July 21, 2004, July 28, 2004, *Denton Record Chronicle*.	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	June 29, 2004	480194
Tarrant (Case No.: 04–06–875P).	City of Euless ...	July 1, 2004, July 8, 2004, *The Star Telegram*.	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 N. Ector Drive—Building B, Euless, TX 76039.	June 4, 2004	480593
Fort Bend (Case No.: 03–06–2671P).	Unincorporated Areas.	Sept. 1, 2004, Sept. 8, 2004, *Fort Bend Star*.	The Hon. Robert E. Hebert, PhD, Judge, Fort Bend County, 301 Jackson Street, Richmond, TX 77469.	Dec. 9, 2004	480228
Tarrant (Case No.: 04–06–1188P).	City of Fort Worth.	Sept. 1, 2004, Sept. 8, 2004, *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Dec. 8, 2004	480596
Tarrant (Case No.: 04–06–038P).	City of Fort Worth.	Aug. 18, 2004, Aug. 25, 2004, *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	July 26, 2004	480596
Tarrant (Case No.: 03–06–2694P).	City of Fort Worth.	June 30, 2004, July 7, 2004, *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Oct. 6, 2004	480596
Tarrant (Case No.: 04–06–864P).	City of Fort Worth.	July 14, 2004, July 21, 2004, *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	June 23, 2004	480596
Tarrant (Case No.: 03–06–2546P).	City of Fort Worth.	June 10, 2004, June 17, 2004, *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	May 14, 2004	480596
Collin (Case No.: 03–06–2038P).	City of Frisco	Aug. 6, 2004, Aug. 13, 2004, *The Frisco Enterprise*.	The Honorable Mike Simpson, Mayor, City of Frisco, 6891 Main Street, Frisco, TX 75034.	July 21, 2004	480134

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Harris (Case No.: 03–06–1393P).	Unincorporated Areas.	Aug. 17, 2004, Aug. 24, 2004, *The Houston Chronicle*.	The Honorable Robert A. Eckels, Judge, Harris County, 1001 Preston, Suite 911, Houston, TX 77002.	July 23, 2004	480287
Tarrant (Case No.: 03–06–1204P).	City of Hurst	Sept. 2, 2004, Sept. 9, 2004, *The Star Telegram*.	The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	Dec. 9, 2004	480601
Tarrant (Case No.: 03–06–2875P).	City of Hurst	Aug. 24, 2004, Aug. 31, 2004, *The Star Telegram*.	The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	Aug. 27, 2004	480601
Tarrant (Case No.: 03–06–2672P).	City of Hurst	July 21, 2004, July 28, 2004, *The Star Telegram*.	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	July 30, 2004	480601
Tarrant (Case No.: 03–05–1850P).	City of Hurst	Oct. 1, 2004, Oct. 8, 2004, *The Star Telegram*.	The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	Oct. 7, 2004	480601
Harris (Case No.: 03–06–2671P).	City of Houston	Sept. 2, 2004, Sept. 9, 2004, *The Houston Chronicle*.	The Honorable Bill White, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Dec. 9, 2004	480296
Tarrant (Case No.: 04–06–1017P).	City of Mansfield	Sept. 2, 2004, Sept. 9, 2004, *Mansfield News Mirror*.	The Honorable Mel Neuman, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063–0337.	Aug. 17, 2004	480606
Collin (Case No.: 03–06–2534P).	City of McKinney.	Aug. 11, 2004, Aug. 18, 2004, *McKinney Courier-Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Nov. 17, 2004	480135
Dallas (Case No.: 03–06–2530P).	City of Mesquite	July 29, 2004, Aug. 5, 2004, *The Mesquite News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Nov. 4, 2004	485490
Fort Bend (Case No.: 03–06–2671P).	City of Missouri City.	Sept. 2, 2004, Sept. 9, 2004, *Fort Bend Mirror*.	The Honorable Allen Owen, Mayor, City of Missouri City, 1522 Texas Parkway, Missouri City, TX 77489.	Dec. 9, 2004	480304
Collin (Case No.: 04–06–027P).	City of Plano	Sept. 3, 2004, Sept. 10, 2004, *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086–0358.	Dec. 10, 2004	480140
Collin (Case No.: 03–06–2548P).	City of Plano	Aug. 4, 2004, Aug. 11, 2004, *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75086–0358.	Aug. 17, 2004	480140
Tarrant (Case No.: 03–06–848P).	City of Richland Hills.	Aug. 18, 2004, Aug. 25, 2004, *N.E. Tarrant County Morning News*.	The Honorable Nelda Stroder, Mayor, City of Richland Hills 3200 Diana Drive, Richland Hills, TX 76118.	July 20, 2004	480608
Tarrant (Case No.: 04–06–864P).	City of Saginaw	July 14, 2004, July 21, 2004, *The Star Telegram*.	The Honorable Frankie Robins, Mayor, City of Saginaw, P.O. Box 79070, Saginaw, TX 76179.	June 23, 2004	480610
Bexar (Case No.: 03–06–1947P).	City of San Antonio.	Aug. 31, 2004, Sept. 7, 2004, *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	Aug. 12, 2004	480045
Bexar (Case No.: 03–06–1745P).	City of San Antonio.	June 16, 2004, June 23, 2004, *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	Sept. 22, 2004	480045
Bexar (Case No.: 03–06–829P).	City of San Antonio.	June 30, 2004, July 7, 2004, *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	Oct. 6, 2004	480045
Tarrant (Case No.: 04–06–866P).	City of Southlake.	June 23, 2004, June 30, 2004, *The Star Telegram*.	The Honorable Andy Wambsganss, Mayor, City of Southlake, 1400 Main Street, Southlake, TX 76092.	June 16, 2004	480612

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant (Case No.: 04–06–1192P).	City of North Richland Hills.	Sept. 16, 2004, Sept. 23, 2004, *N.E. Tarrant County Morning News.*	The Honorable Oscar Trevino, Jr., P.E., Mayor, City of N. Richland Hills, P.O. Box 820609, North Richland Hills, TX 76182.	Aug. 23, 2004	480607
Wise (Case No.: 03–06–2058P).	Unincorporated Areas.	July 15, 2004, July 22, 2004, *Wise County Messenger.*	The Honorable Dick Chase, Judge, Wise County, P.O. Box 393, Decatur, TX 76231–0393.	Oct. 21, 2004	481051

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 17, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–26599 Filed 12–2–04; 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, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (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 DATE: 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 FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations 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, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the BFEs and 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. 4105, and 44 CFR part 67.

The Federal Emergency Management 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 modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, 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 record keeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read 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) modified ♦ Elevation in feet (NAVD) modified
ARKANSAS	
Beebe (City) White County (FEMA Docket No. P7647)	
Cypress Bayou:	
Just upstream of the Union Pacific Railroad	♦220

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD) modified ♦ Elevation in feet (NAVD) modified
Approximately 0.85 mile upstream of the Union Pacific Railroad	♦220
Red Cut Slough Tributary:	
Approximately 0.48 mile downstream of U.S. Highway 67	♦224
At West Mississippi Street	♦235
Red Cut Slough Tributary A:	
Approximately 1,450 feet downstream of the Union Pacific Railroad	♦220
Approximately 140 feet upstream of California Street	♦229
Red Cut Slough Tributary No. 2:	
Approximately 0.41 mile upstream of the confluence with Red Cut Slough	♦220
Approximately 1.40 miles upstream of the confluence with Red Cut Sough	♦230
Maps are available for inspection at City Hall, 321 North Elm Street, Beebe, Arkansas.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 17, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–26601 Filed 12–2–04; 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, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (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).

DATES: *Effective Date:* 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 FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations 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, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the BFEs and 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. 4105, and 44 CFR part 67.

The Federal Emergency Management 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 modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, 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 to read 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 of referenced elevation	* Elevation in feet (NGVD) modified ♦ Elevation in feet (NAVD) modified	Communities affected
FEMA Docket No. P7657		
Lateral 1–B/Tributary No. 11:		
Approximately 50 feet upstream of the confluence with Yocona-Spybuck Drainage Canal	*205	City of Forrest City.
Approximately 2,275 feet upstream of Union Pacific Railroad	263	St. Francis County (Unincorporated Areas).
Spybuck Drainage Canal:		
Approximately 1,165 feet downstream of Woodroe Holeman Road	*216	City of Forrest City.
Approximately 2,300 feet upstream of Commerce Drive	*238	St. Francis County (Unincorporated Areas).
Tributary No. 1:		
Approximately 975 feet downstream of Woodroe Holeman Road	*216	City of Forrest City.
Approximately 2,470 feet upstream of County Highway 213	*238	St. Francis County (Unincorporated Areas).
Tributary No. 4:		
At the confluence with Tributary No. 5	*222	City of Forrest City.
Approximately 60 feet upstream of Dawson Road	*243	St. Francis County (Unincorporated Areas).
Tributary No. 5:		
Approximately 2,090 feet downstream of County Highway 231	*218	City of Forrest City.
Approximately 350 feet upstream of Entergy Drive	*239	St. Francis County (Unincorporated Areas).
Tributary No. 6:		
Approximately 1,000 feet downstream of County Highway 205	*221	City of Forrest City.
Approximately 5,330 feet upstream of County Highway 205	*239	St. Francis County (Unincorporated Areas).
Tributary No. 7:		
Approximately 1,000 feet downstream of County Highway 205	*221	City of Forrest City.
Approximately 1,075 feet upstream of Turner Circle	*229	St. Francis County (Unincorporated Areas).
Tributary No. 10:		
At the confluence with Yocono-Spybuck Drainage Canal (MD–1)	*217	City of Forrest City.
Approximately 5,010 feet upstream of County Highway 202/Union Pacific Railroad	*221	St. Francis County (Unincorporated Areas).
Tributary No. 12:		
At the confluence with Lateral 1–B (Tributary No. 11)	*213	St. Francis County (Unincorporated Areas).
Approximately 4,035 feet upstream of County Highway 808	*221	
Tributary No. 13:		
At the confluence with Tributary No. 12	*214	City of Forrest City.
Approximately 4,500 feet upstream of the confluence with Tributary No. 12	*222	St. Francis County (Unincorporated Areas).
Tributary No. 14:		
At the confluence with Tributary No. 12	*215	City of Forrest City.
Approximately 100 feet upstream of Yocona Road	*216	St. Francis County (Unincorporated Areas).
Tributary No. 16:		
At the confluence with Tributary No. 12	*217	City of Forrest City.
Approximately 2,920 feet upstream of Yocona Road	*224	St. Francis County (Unincorporated Areas).
Tributary No. 17:		
Approximately 260 feet downstream of the confluence of Tributary No. 18	*219	St. Francis County (Unincorporated Areas).
FEMA Docket No. P7657		
Approximately 4,150 feet upstream of County Highway 814	*229	
Tributary No. 18:		
At the confluence with Tributary No. 17	*220	St. Francis County (Unincorporated Areas).
Approximately 2,850 feet upstream of the confluence with Tributary No. 17	*225	
Tributary No. 19:		
At the confluence with Tributary No. 17	*223	St. Francis County (Unincorporated Areas).
Approximately 2,390 feet upstream of the confluence with Tributary No. 17	*226	

ADDRESSES

City of Forrest City

Maps are available for inspection at City Hall, 224 North Rosser, Forrest City, Arkansas.

St. Francis County (Unincorporated Areas)

Source of flooding and location of referenced elevation	* Elevation in feet (NGVD) modified ♦ Elevation in feet (NAVD) modified	Communities affected
Maps are available for inspection at County Courthouse, 313 South Izard Street, Forrest City, Arkansas.		
FEMA Docket No. P 7649		
West Nishnabotna River:		
At U.S. Highway 6	♦1,077	City of Council Bluffs, City of Oakland, Pottawattamie County (Unincorporated Areas).
Approximately 4,850 feet upstream of Honeysuckle Road/County Highway G42	♦1,088	
Mosquito Creek:		
Approximately 5,785 feet downstream of Interstate 29	♦980	Pottawattamie County (Unincorporated Areas).
Approximately 1,760 feet downstream of Interstate 29	♦983	
Mosquito Creek:		
Intersection of E. South Omaha Bridge and 192nd Street	#1	Pottawattamie County (Unincorporated Areas).
Intersection of Basswood Road and 192nd Street	#1	
Missouri River:		
Approximately 5,250 feet upstream of Interstate 480	♦985	City of Carter Lake.
Approximately 8,925 feet upstream of Interstate 480	♦985	

ADDRESSES

City of Carter Lake

Maps are available for inspection at City Hall, 950 Locust Street, Carter Lake, Iowa.

City of Council Bluffs

Maps are available for inspection at the Community Development Office, 403 Willow Street, Council Bluffs, Iowa.

City of Oakland

Maps are available for inspection at City Hall, 101 North Main Street, Oakland, Iowa.

Pottawattamie County (Unincorporated Areas)

Maps are available for inspection at the County Courthouse, 227 South 6th Street, Council Bluffs, Iowa.

FEMA Docket No. P 7611		
Elkhorn River:		
Approximately 4,800 feet downstream of 558th Avenue	*1,498	Madison County (Unincorporated Areas). City of Tilden, Village of Meadow Grove. City of Norfolk, Village of Battle Creek.
Approximately 300 feet upstream of Center Street/534th Avenue	*1,657	
Union Creek:		
Approximately 1.9 miles upstream of 3rd Street	*1,589	Madison County (Unincorporated Areas).
Approximately 1.7 miles upstream of 3rd Street	*1,588	

ADDRESSES

City of Battle Creek

Maps are available for inspection at 102 South Second Street, Battle Creek, Nebraska.

Madison County (Unincorporated Areas)

Maps are available for inspection at Zoning Administration, 1112 Bonita Drive, Norfolk, Nebraska.

Village of Meadow Grove

Maps are available for inspection at 208 Main Street, Meadow Grove, Nebraska.

Maps are available for inspection at 701 Koeningstein Avenue, Norfolk, Nebraska.

City of Tilden

Maps are available for inspection at City Clerk, 202 South Center, Tilden, Nebraska.

FEMA Docket No. P 7643		
Bear Creek:		
Mouth at Great Miami River	*704	Village of New Lebanon, City of Miamisburg. City of Moraine, Montgomery County (Unincorporated Areas).
At the confluence of Diehl Run (Approximately 5,600 feet upstream of U.S. Highway 35)	*881	

Source of flooding and location of referenced elevation	* Elevation in feet (NGVD) modified ♦ Elevation in feet (NAVD) modified	Communities affected
Diehl Run:		
Confluence at Bear Creek	*881	Village of New Lebanon, Montgomery County (Unincorporated Areas).
Approximately 35 feet downstream of North Johnsonville Road	*960	
Dry Run:		
Just upstream of Free Pike	*804	City of Clayton, City of Dayton, City of Trotwood, Montgomery County (Unincorporated Areas).
Approximately 710 feet upstream of Union Road	*943	
Garber Run:		
Mouth at Bear Creek	*856	Montgomery County (Unincorporated Areas).
Approximately 6,200 feet upstream of Old Dayton Road	*934	
Holes Creek:		
Just upstream of CSX Railroad	*722	City of Centreville, City of Moraine, City of West Carrolton, Montgomery County (Unincorporated Areas).
Approximately 200 feet upstream of Silverlake Drive	*914	
Little Bear Creek:		
Confluence at Bear Creek	*775	Montgomery County (Unincorporated Areas).
Approximately 2,870 feet upstream of Old Dayton Road	*935	
North Branch Wolf Creek:		
Just upstream of Oakes Road	*860	City of Clayton, City of Trotwood, Montgomery County (Unincorporated Areas).
Just downstream of Interstate 70/U.S. Highway 49	*944	
Poplar Creek:		
Approximately 250 feet downstream of East Stonequarry Road	*865	City of Vandalia.
Approximately 580 feet upstream of East Stonequarry Road	*875	
Spring Run:		
Confluence at Little Bear Creek	*819	Montgomery County (Unincorporate Areas).
Approximately 2,000 feet upstream of North Snyder Road	*916	

ADDRESSES

City of Centerville

Maps are available for inspection at Municipal Government Center, 100 West Spring Valley Road, Centerville, Ohio.

City of Clayton

Maps are available for inspection at City Administration Building, 6996 Taywood Road, Englewood, Ohio.

City of Dayton

Maps are available for inspection at Planning and Community Development Office, 101 West Third Street, Dayton, Ohio.

City of Miamisburg

Maps are available for inspection at City Annex Building, 10 North First Street, Miamisburg, Ohio.

City of Moraine

Maps are available for inspection at Community Development Department, Municipal Building, 4200 Dryden Road, Moraine, Ohio.

Village of New Lebanon

Maps are available for inspection at Municipality of New Lebanon Village Offices, 198 South Clayton Road, New Lebanon, Ohio.

City of Trotwood

Maps are available for inspection at Department of Public Works, Trotwood Government Center, 4 Strader Drive, Trotwood, Ohio.

City of Vandalia

Maps are available for inspection at City of Vandalia City Building, 333 James E. Bohanan Memorial Drive, Vandalia, Ohio 45377.

City of West Carrolton

Maps are available for inspection at City of West Carrollton Civic Center, 300 East Central Avenue, West Carrollton, Ohio.

Montgomery County

Maps are available for inspection at Montgomery County Administration Building, 451 West Third Street, Room 800, Dayton, Ohio.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 17, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–26600 Filed 12–2–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112604A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Fall Commercial Red Snapper Component

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the fall portion of the annual commercial quota for red snapper will be reached on December 15, 2004. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, December 15, 2004, until noon, local time, on February 1, 2005.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management 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. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2004. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available fall commercial quota of 1.60 million lb (0.73 million kg) for red snapper will be reached when the fishery closes at noon on December 15, 2004. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on February 1, 2005. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, December 15, 2004.

During the closure, a person aboard a vessel for which a commercial permit for Gulf reef fish has been issued may not harvest or possess red snapper from the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, December 15, 2004, and were held in cold storage by a dealer or processor.

Classification

This action is required by 50 CFR 622.43(a) and is exempt from review under Executive Order 12866. This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because it requires time during which harvest would likely exceed the quota. Similarly, NMFS finds good cause that the implementation of this action cannot be delayed for 30 days. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. Given the capacity of the fishing fleet to exceed the quota quickly, there is a need to implement this measure in a timely fashion to prevent an overage of the commercial quota of Gulf red snapper. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

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

Dated: November 29, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–26637 Filed 12–2–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 232
Friday, December 3, 2004

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF22

Small Business Size Standards; Selected Size Standards Issues

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking (ANPRM) seeks comments from the public on several issues that were raised during the public comment period of the U.S. Small Business Administration's (SBA or Agency) recently withdrawn proposal to restructure its small business size standards. The issues discussed in this ANPRM address matters pertaining to SBA's size standards but were not part of the March 19, 2004, proposed changes. To assist SBA with examining how best to restructure and simplify its size standards, the Agency invites comments on these issues to take into consideration in any future proposal. This ANPRM also seeks comments on an issue concerning the participation of businesses that are majority-owned by venture capital companies in the Small Business Innovation Research (SBIR) Program. Specifically, the SBA is seeking comments on whether it should provide an exclusion from affiliation with venture capital companies in determining small business eligibility for the SBIR Program.

DATES: Comments must be received on or before February 1, 2005.

ADDRESSES: You may submit comments, identified by RIN 3245–ZA02 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *restructure.sizestandandards@sba.gov.* Include RIN 3245–ZA02 in the subject line of the message.
- Fax: (202) 205–6930.
- Mail: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Washington, DC 20416.
- Hand Delivery/Courier: Gary M. Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW., Washington, DC 20416.

Upon receipt of a written request under the Freedom of Information Act, SBA will make available all public comments received.

FOR FURTHER INFORMATION CONTACT: SBA's Office of Size Standards at (202) 205–6618 or at *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On March 19, 2004, SBA published a proposed rule to restructure its small business size standards by establishing them based primarily on the number of employees of a business concern and by limiting to 10 the number of different size standard levels (69 FR 13130). SBA believed this would simplify the existing structure of size standards and enable the public to better understand and use them. The proposed rule also included changes to several specific program-related and specialized size standards as an effort to reduce the overall variation of size standards.

The SBA received more than 4,500 comments on the proposed changes, with a majority of the comments expressing support for the proposal. More than 2,300 comments that supported the proposal agreed with the position advanced by one organization by submitting an identical comment, which focused primarily on the proposal to revise the 500 employee size standard for nonmanufacturers to 100 employees. Of the remaining comments, most of them objected to the proposed size standards. These opposing comments raised concerns about SBA's methodology for converting receipts-based size standards to employee-based size standards and their resulting levels, the number of potential businesses losing small business status, the thoroughness of SBA's regulatory flexibility analysis of the proposed changes, the determination of the employee size of a business, and SBA's overall approach to simplifying size standards. As a result of the concerns expressed by a large number of comments, SBA withdrew the proposal on July 1, 2004 (69 FR 39874).

SBA remains committed to modifying its size standards in a manner to make them simpler and easier to use. SBA seeks input from the public on several issues on which it believes additional comment would be helpful before deciding the next course of action. These issues concern various aspects of size standards that have implications on the restructuring proposal but were not part of the changes in the March 19, 2004, proposed rule. Specifically, these issues pertain to the approach to simplify size standards, the calculation of number of employees (including how SBA defines an employee for size purposes), the use of receipts-based size standards, the designation of size standards for Federal procurements, the establishment of size standards for use solely in Federal procurement programs, the establishment of tiered size standards, the simplification of affiliation regulations, the simplification of the small business joint venture eligibility regulations, the grandfathering of small business eligibility, and the impact of SBA size standards on the regulations of other Federal agencies.

SBA is planning other actions on size standards in addition to this ANPRM. First, SBA plans to hold a series of public meetings on size standards. These meetings will focus on the issues raised in this ANPRM. Second, SBA is examining a number of specific size standards as separate rulemaking actions, such as the nonmanufacturer size standard which received a large number of comments supporting a reduction to the size standard.

This ANPRM also seeks comments on an issue concerning the participation of businesses majority-owned by venture capital companies in the SBIR Program. Under SBA's affiliation regulations, a business concern that is majority-owned by a company must include the size of the company and all of its affiliates in determining small business status for the SBIR Program and for most other programs. SBA seeks public comments on whether it should provide an exclusion from affiliation with venture capital companies in determining small business eligibility for the SBIR Program, assuming such companies met the other eligibility criteria for the program.

Approaches to simplification of size standards. As discussed above, SBA proposed to restructure its size standards as a way to simplify and make

them easier to use. The March 19, 2004, proposal would have accomplished this by primarily modifying the structure of size standards. Many of the comments agreed with this approach. However, many other comments contended that the current structure is not complicated or difficult to understand, and that the proposal would in fact make size standards more complicated.

Over the years, SBA's size standards on occasion have been criticized as being difficult to understand. Many of these complaints relate to issues regarding the application of size standards, not to the size standards themselves. This ANPRM provides the public with an opportunity to advise SBA on what areas of size standards make them complicated or difficult to use or understand. SBA's March 19, 2004, proposal to simplify the structure of size standard is an approach to address one aspect of size standards. SBA is interested in whether this approach achieves simplification or if other approaches should be examined that address other aspects of size standards. Comments on this issue should explain how a particular aspect of size standards is complicated, and what modifications could be made to improve upon existing policies. The comments should also describe the benefits to small businesses and the users of size standards if such modifications were adopted.

Calculation of number of employees. The March 19, 2004, proposed rule expanded the use of employee-based size standards to industries that have traditionally used receipt-based size standards, such as the Construction, Retail Trade, and the Services Sectors. SBA did not propose to change its method for counting number of employees. Under the Small Business Size Regulations, 13 CFR 121.106, SBA calculates number of employees in the following manner:

Section 121.106 How Does SBA Calculate Number of Employees?

(a) In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.,* individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) Where the size standard is number of employees, the method for determining a concern's size includes the following principles:

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

(2) Part-time and temporary employees are counted the same as full-time employees.

(3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(4)(i) The average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the business concern with the average number of employees of each affiliate. If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose. (ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

Many comments recommended that SBA modify its method for calculating the number of employees of a business concern. These comments pointed out that under SBA's current method, businesses that utilize part-time employees, temporary employees, or lower-paid employees would tend to outgrow an employee-based size standard quicker than a similar business that primarily utilized full-time employees. Calculating employment size on a full-time equivalent (FTE) basis was often mentioned as an alternative. Calculating part-time employees in a different manner from full-time employees in determining the overall employment size of a business was also suggested. Comments on this issue also raised concerns regarding the treatment of independent contractors in determining employment size.

SBA seeks comments on alternative methods of calculating the employment size of a business concern and, in particular, the feasibility of using FTEs. The comments should clearly describe the alternative calculation method and why it would be preferable to SBA's current calculation of number of employees. Comments recommending an alternative calculation should also address the implications on the types of businesses that could be affected in terms of small business eligibility.

Related to this issue is whether the time period for calculating average employment should be modified from SBA's current method, which uses a rolling average of the pay periods over the preceding 12 months. For example, should average employment be based on a fixed period of time, such as a calendar year? Also, should average employment be based on a longer period than one year? Comments should describe the alternative time period and explain why it would be an improvement to the current averaging calculation.

If SBA chooses to modify its calculation of number of employees, the method must be one that allows businesses to provide supporting documents to the SBA, in the event of a size protest, in a verifiable manner and one that would not create an excessive administrative burden. Many comments on the use of employee-based size standards contended that calculating and reporting to SBA their business' employment size is administratively burdensome. However, other comments pointed out that automated payroll and accounting systems enable businesses to readily document their employment size. SBA is particularly interested in comments that described the process small businesses must follow to calculate average employment and whether producing this information creates an unacceptable burden. Alternative methods of calculating average employment should address the implications on the alternative calculation on administrative burdens.

Use of receipts-based size standards. SBA received a number of comments recommending that it continue to use receipts-based size standards. These comments generally provided one of three reasons for their position. First, receipts are considered a more appropriate measure of business size for their industry than number of employees. Second, average annual receipts are simpler than number of employees for businesses when determining their small business status and less burdensome in providing documentation to SBA in the event of a size protest. (SBA evaluates the average annual receipts size of a business based on the Federal tax returns submitted by the business to the Internal Revenue

Service (13 CFR 121.104)). Third, the use of employee-based size standards could encourage businesses to reduce employment, use fewer part-time and lower-paid employees, convert employees to independent contractors, subcontract more work to other businesses, and make other employment related decisions that they would not otherwise adopt.

SBA seeks comments on whether it should continue to use receipts-based size standards or establish size standards based exclusively on number of employees. SBA in particular seeks comments on what considerations it should give when deciding whether an industry size standard should be based on average annual receipts or number of employees. Also, for what industries are receipts-based size standards more appropriate than employee-based size standards, and in what ways are they more appropriate? Comments on this issue should address if having one measure of size for some industries and a different measure for other industries creates an unnecessary complication to size standards.

Designation of size standards for Federal procurements. The size standard designated for a Federal procurement is determined by the North American Industry Classification System (NAICS) industry that best describes the principle purpose of the procurement (see 13 CFR 121.402). This decision is the responsibility of the contracting officer. Once the NAICS industry is designated, the size standard established by SBA is assigned to the procurement solicitation. Some comments pointed to this process as an area that makes size standards complicated. Because size standards vary by industry, businesses and contracting officers have at times argued for an incorrect NAICS designation so as to effect the small business eligibility of certain businesses. Other comments pointed out that Federal procurements that require a contractor to perform a significant amount of activities from several different industries are more difficult to designate a single NAICS industry than for procurements which primarily consists of activities of one NAICS industry. Furthermore, varying size standards by NAICS industry results in some businesses that operate in multiple industries being considered small for some Federal procurements but not for other types of procurements.

SBA seeks comments on whether the process for applying size standards to Federal procurements should be modified. If so, the comments should describe an alternative system and how it would improve upon the current process. Comments should also address how the alternative process would ensure that small businesses fairly compete with other businesses that are small in that field of work.

Establishment of size standards solely for Federal procurement. SBA received comments arguing that it should significantly increase size standards to assist small businesses in developing a sufficient infrastructure that will allow them to compete for Federal procurements in full and open competition against the leading Federal contractors. These comments contended that the requirements and growing size of Federal contracts create a situation in which a small business that is awarded one or two Federal contracts automatically outgrows the size standard and loses its eligibility to compete for future contracts requiring small business status. These comments further contended that businesses that are not small or among the largest Federal contractors enter a ''dead zone'' or ''limbo zone'' where they must compete for future Federal contracting opportunities against corporate giants before they have developed a competitive strength to do so.

In 1984, SBA adopted a policy that its industry size standards would apply to all programs. Before then, SBA had one set of size standards for Federal procurement and one set for all other small business programs. SBA is concerned that a significant increase in the size standards to reflect trends in Federal procurement would create size standards that are too high to realistically reflect small businesses in an industry or for the purposes of most other Federal small business programs.

SBA seeks comments on whether a separate set of size standards should be established specifically for Federal procurement or whether this would needlessly complicate size standards. These comments should address the public policy justification for establishing such a separate set of size standards. That is, why should a small business be eligible for one program but not be eligible for another small business program? If separate Federal procurement size standards were established, what factors should SBA take into consideration in developing the size standards that are different from SBA's current industry analysis methodology (see SBA's size standards Web page for proposed rules that describe the industry analysis at *http://www.sba.gov/size*)? Also, please address whether separate Federal procurement size standards that are higher than the current size standards would adversely affect the assistance to a particular segment of small businesses extending assistance to relatively successful larger small and mid-sized businesses.

Establishment of tiered size standards. A number of comments suggested that SBA establish size standards to direct assistance to different sizes of small businesses. That is, SBA should establish size standards for sub-categories of small businesses, such as a very small business. These comments generally argued that two levels of size standards are needed to assist small businesses in developing into competitive businesses capable of being successful on Federal procurements competed on a full and open basis. These comments recognized that higher size standards may adversely affect the competitiveness of small businesses much smaller than the size standard. Many of these comments tied the establishment of tiered size standards with the estimated dollar value of a Federal procurement. That is, lower dollar value procurements could be reserved for very small businesses while other procurements could continue to be available to all small businesses.

Two programs have provided for special treatment of sub-categories of small businesses. Both of these programs were authorized by legislation. Under the Small Business Competitiveness Demonstration Program (Pub. L. 100–656, the Small Business Competitiveness Demonstration Program of 1988, as amended), procurements of $25,000 or less are reserved for emerging small businesses, defined as businesses one-half of the applicable size standards. This program applies to Federal procurements in four designated industry categories (construction, refuse systems, non-nuclear ship repair, and architectural and engineering services) issued by 10 participating agencies (64 FR 29693, dated June 2, 1999). Until recently, the SBA also had a Very Small Business (VBS) Program.[1] For purposes of that Program, a very small business was defined as one with 15 employees and $1 million or less in average annual receipts (13 CFR 125.7). The Program authorized Federal agencies in 10 geographic locations to reserve procurements of $2,500 and $50,000 for very small businesses. A legislative

[1] The VSB Program was a pilot program authorized under Section 304 of the Small Business Administration Reauthorization and Amendments Act of 1994 (Pub. L. 103–403). This pilot program was extended to September 30, 2003, by the Small Business Reauthorization Act of 2000, and further extended through June 4, 2004, by Public Law 108–217, 118 Stat. 591.

provision also established a business category termed smaller enterprise for purposes of the Small Business Investment Company (SBIC) Program (Pub. L. 104–205, 110 Stat. 3009–740). A smaller enterprise is defined as a business with $6 million or less in net worth and $2 million or less in net income (13 CFR 107.710). Under the SBIC Program, a small business investment company's portfolio must include a certain proportion of its financings to smaller enterprises.

Although legislative authority would be necessary before SBA could consider establishing tiered size standards, it seeks comments on whether the concept of tiered size standards addresses a compelling need to assist certain segments of small businesses with meaningful Federal contracting opportunities. If tiered size standards have potential to better assist small businesses with Federal contracting opportunities, how could such a system be structured? Because tiered size standards would create more complexity in Federal contracting, what are implications of a small business sub-category on other designated business types (8(a), HUBZone, service-disabled veteran owned small business, women-owned small business, *etc.*) in terms of assistance to those businesses?

Simplification of small business status and affiliation with other businesses. A key provision of SBA's size standards is the consideration of affiliation with other businesses in determining the size of a business. This fundamental concept ensures that Federal small business assistance programs are limited to small businesses that, because of their size, possess inherent disadvantages that larger businesses do not experience.

SBA's general principles of affiliation provide that concerns are affiliates of one another when one concern controls or has the power to control the other, or a third party (or parties) controls or has the power to control both. The power to control need not be exercised; it need only be present. More than 50% ownership of a concern by another will always create affiliation (with certain exceptions, summarized in the next paragraph). Affiliation may also exist if there is less than 50% ownership of a concern by another. In these situations, SBA will also consider factors such as management, previous relationships, shared business or economic interests, economic dependence, convertible debentures, agreements to merge, *etc.*, in determining when affiliation exists in a given situation. The regulations have been developed over many years to provide guidance to the public on how SBA evaluates affiliation. Because relationships among business concerns can be extremely complicated and at times difficult to fully discover, the affiliation regulations are more extensive than other size regulations.

SBA invites comments addressing ways to clarify its affiliation regulations. SBA is not considering altering its principles of affiliation. Rather, it seeks suggestions that have the potential of improving the language of the affiliation regulations to make them easier for the public to understand. Comments on affiliation should explain how a current regulatory provision is unclear and suggest revised language.

The SBA does seek comments on one specific area of affiliation involving the small business eligibility of franchises. SBA has received requests from the Temporary Staffing Franchise industry to allow for an exemption from its franchise affiliation regulations. The SBA is considering excluding certain practices of temporary franchisors as conditions for finding affiliation. The practices are (1) the franchisor being the employer of the individuals placed as temporary workers by a franchisee, (2) the franchisor being responsible for the franchisee's payroll and associated costs, (3) the franchisor collecting the franchisee's accounts receivable, and (4) the franchisor remitting client fees to their franchisees. Before developing a proposed rule, SBA seeks comments from businesses in the temporary staffing industry, including those independent staffing firms that are not involved in franchise agreements. SBA is interested in knowing how a change in its affiliation rule for franchises would affect the temporary staffing industry, in particular:

- Do SBA's current franchise regulations hamper the ability of franchisees to compete in the temporary staffing industry?
- Would allowing this exemption continue to allow for temporary staffing franchisees to be ''independently owned and operated'' businesses?
- Does allowing this exemption give franchisors too much control over their franchisees?
- Would allowing this exemption give franchisors and franchisees a competitive advantage in contracting over independent temporary staffing businesses?

Joint ventures and small business eligibility. SBA's size regulations have specific provisions determining the small business eligibility of joint ventures. In general, a joint venture of two or more businesses may qualify as an eligible small business if the aggregate size of all the members does not exceed the applicable size standard (13 CFR 121.103(f)). For certain larger Federal procurements, a joint venture whose members individually qualify as a small business may qualify as an eligible small business joint venture. On May 21, 2004, SBA adopted a change to this provision that allows a joint venture to compete for multiple opportunities (69 FR 29192). However, an ongoing joint venture is limited to submitting offers on three procurement opportunities over a 2 year period. SBA believes that joint ventures among small businesses facilitate opportunities for small businesses to compete for larger-sized Federal procurements.

SBA is seeking additional comment on its joint venture eligibility criteria. Comments addressing the nature of joint ventures formed by small businesses to compete on Federal procurements, the duration of such joint ventures, their competitive strength against other small businesses, and other aspects of joint ventures that have a bearing on policies to assist small business opportunities are also encouraged. SBA is specifically interested in obtaining comments on the recent policy of limiting a small business joint venture to three offerings over a 2 year period. SBA is concerned about permitting a joint venture among the same small businesses to operate as an on-going concern competing against other small businesses. At the same time, this new policy may be too restrictive in today's Federal contracting environment.

Grandfathering of currently eligible small businesses. As mentioned above, one of the concerns with the March 19, 2004, proposed rule was the potential impact on small business that might lose small business eligibility as a result of the restructuring of size standards. Many of these comments pointed out that businesses develop their business plans over the next several years premised on the existing regulations. Abrupt changes that take away small business eligibility significantly disrupt these business plans and force businesses to reassess the viability of their strategies.

SBA expects that any new proposed rule to address the current structure of size standards will have significantly less impact on current small business eligibility than the March 19, 2004, proposal. However, any worthwhile changes will invariably have an adverse impact on a few small businesses. SBA seeks comments on approaches by which to grandfather small businesses that could be adversely impacted by a future restructuring. A related alternative may consist of a longer implementation date than the typical 30

day period to allow businesses to adjust to the new regulations. SBA realizes that it may be difficult to provide comments without a specific proposal. However, SBA seeks general ideas on the approaches and relevant factors it considers if a provision to maintain small business eligibility becomes necessary for a particular proposal.

Impact of SBA size standards on the regulations of other Federal Agencies. An area of concern expressed by the comments pertained to SBA's analysis of the impact of the March 19, 2004, proposed changes. Under the Regulatory Flexibility Act (5 U.S.C. 601–612), Federal agencies must assess whether their regulatory changes will significantly impact a substantial number of small entities. In reviewing these comments, SBA believes it has sufficient information by which to fully analyze most of the concerns raised by these comments.

However, one area that is more difficult to examine involves the impact of SBA's size standards on the programs and regulations of other Federal agencies. SBA is aware of the use of its size standards in a number of Federal regulations and is in the process of identifying others. To ensure that future proposals adequately identify and assess the use of SBA's size standards, SBA is requesting assistance in identifying Federal regulations and programs that utilize its size standards. In addition, SBA welcomes comments describing the impact that a size standard change may have on small entities being subject to different regulatory requirements or their eligibility for Federal benefits. Comments on how size standard changes may effect a Federal agency's ability to meet the purposes of the regulation will also be helpful.

Participation of Businesses Majority-Owned by Venture Capital Companies in the SBIR Program

The U.S. Small Business Administration (SBA) seeks public comments on whether it should provide an exclusion from affiliation for venture capital companies (VCC) in size determinations for eligibility for the SBIR Program. Under such a policy, VCCs that invest in SBIR participants would not be considered affiliates of the SBIR participant and their size would therefore not be included in determining the size of the participant.

On June 4, 2003, SBA proposed in the **Federal Register**, 68 FR 33412, to modify § 121.702 of its Small Business Size Regulations (13 CFR part 121) to allow a small business that is owned and controlled by another business concern to be eligible for funding agreements under the SBIR Program. The size standard for the SBIR Program requires that an eligible small business concern, with its affiliates, have no more than 500 employees. The proposed rule did not propose to change this 500 employee size standard for the SBIR Program. The rule proposed only to modify the small business eligibility requirements so that the SBIR awardee must meet one of the two following additional criteria: (1) It must either be a for-profit business concern that is at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States (as the regulations currently require); or (2) it must be a for-profit business concern that is 100% owned and controlled by another for-profit business concern that is itself at least 51% owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. Comments on the proposed rule were due to SBA by July 7, 2003. SBA received 164 comments to the proposed rule. SBA has not yet issued its final rule, but expects to do so in the very near future.

Sixty commenters addressed an issue related to VCCs that was not a subject of the proposed rule. Forty commenters stated that a concern should be allowed to participate in the SBIR Program if one or more VCCs have majority ownership or control of the concern. In addition, most of these 40 commenters believed that if one or more VCCs owned or controlled a concern, the VCC should not be deemed affiliated with the concern. The justification offered was that VCC investment is crucial to startups in the biotech industry and that SBIR funds are needed to reduce the private risk of these investments. The remaining 20 commenters, however, were opposed to any proposal that would allow a concern to participate in the SBIR Program if one or more VCCs have majority ownership or control of the concern. These commenters expressed their concern that because VCC firms often represent and are established by large corporate interests, allowing their subsidiaries to receive SBIR awards could result in SBIR funds, which are reserved for small business concerns, being used to subsidize research projects of large corporations.

The relationship of a VCC or other investment vehicle to an SBIR participant is a broader policy question than SBA sought to address with the June 4, 2003, proposed rule. Under current regulations (§ 121.103, ''What is affiliation?''), when VCCs have control of a firm in which they invest, they are considered affiliated with that firm, just as any other business entity would be if it had ownership or control.

SBA's Small Business Size Regulations in 13 CFR 121.103 provide a small number of exclusions from affiliation. Concerns owned in whole or substantial part by Small Business Investment Companies (SBICs) or development companies licensed under the Small Business Investment Act are not considered affiliated with the SBIC or development company. Also, concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations, Native Hawaiian Organizations and Community Development Corporations are not considered affiliates of these entities solely because of their common ownership and common management. Further, the regulation excludes VCCs, as defined in U.S. Department of Labor regulations (29 CFR 2510.3–101(d)), from affiliation with concerns receiving assistance under the Small Business Investment Act. (The SBIR Program is established under the Small Business Innovation Development Act, not under the Small Business Investment Act.)

SBA believes that determining whether VCCs should be excluded from affiliation under § 121.103, assuming the small business concern meets the ownership and control criteria established by the SBA, requires a separate rulemaking action, affording the public an opportunity to comment directly on SBA's proposal. Although SBA's June 4, 2003, proposed rule did not address this issue, substantial public interest has persuaded SBA to seek additional comments directly on this question. SBA has not determined at this time if it will propose to exclude VCCs from affiliation or to provide some other type of exemption for VCC investments, but is seeking public comment on whether it should propose such a change to its affiliation rule.

SBA requests comments on the issue of whether it should propose a change to the size affiliation regulation for SBIR Program purposes by allowing business concerns that are majority owned or controlled by one or more VCCs to be eligible for SBIR awards, regardless of the ownership and control of the VCCs. SBA is seeking information on how such a change is likely to impact the program and its participants, and how such a change could be implemented while at the same time ensuring that the SBIR Program remains a program that benefits small business entrepreneurs.

Specific issues that SBA is seeking information on include the following:

1. The role of VCC financing on SBIR projects during Phases I and II.

2. The impact of such a change in eligibility requirements on the composition of SBIR participants. For example, would the program shift towards lower-risk technologies closer to market, or become more geographically concentrated following industries and areas of venture capital focus?

3. The types of firms and projects that would benefit most from such a change, and those that would benefit the least.

4. Whether an exclusion from affiliation for VCCs would require justifying limiting the exclusion to VCCs and not including other entities such as not-for-profit organizations.

5. Whether or not granting VCC exclusion from affiliation would adversely affect the ability of small business concerns without such access to private capital to compete for SBIR awards.

6. Whether the participation of firms owned and controlled by VCC firms would ultimately create an environment of multiple repeat award winners.

7. Alternative approaches that may assist small business concerns in obtaining and utilizing VCC funding while participating in the SBIR Program, aside from a policy that requires an exclusion from affiliation for VCC majority-owned small business concerns.

If SBA ultimately determines that it is necessary to develop a proposed rule on this issue, then it will perform an analysis mandated by the Regulatory Flexibility Act (RFA). As part of an RFA analysis, SBA must determine whether the rule will have a significant economic impact on a substantial number of small entities. The RFA defines small entities as small business concerns, small not-for profit organizations, and small governmental jurisdictions. Thus, SBA is seeking comments to determine the number and type of small entities that would be affected by a rule that would provide an exclusion from affiliation for VCC companies in size determinations for eligibility for the SBIR Program. In addition, SBA is seeking comments on the number of small business concerns competing for SBIR awards that have received venture capital funding and the number of VCC majority-owned small business concerns that potentially may be interested in participating in the SBIR Program.

As part of an RFA analysis, SBA must also determine whether the rule will have a significant economic impact on these small entities. To make this determination, agencies seek information about the percentage of revenues or profits affected by the rule. Therefore, SBA is also seeking comments on the costs to small entities if SBA implements a rule that would provide an exclusion from affiliation for VCC companies in size determinations for eligibility for the SBIR Program. Such costs include implementation costs and the effect the rule would have on profits or revenues, *i.e.*, whether it would it reduce profits or raise or lower revenues.

Comments on any other aspect of the SBIR Program that might directly affect whether or not SBA should propose excluding VCCs from affiliation for purposes of the SBIR Program are also welcome.

Dated: September 15, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–26609 Filed 12–2–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19795; Directorate Identifier 2004–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 777–200 and –300 series airplanes. This proposed AD would require replacing the existing halogen lamps in the cargo compartment light assemblies with new incandescent lamps, and installing warning and identification placards. This proposed AD is prompted by a report of an aft cargo fire during flight. We are proposing this AD to prevent a fire in the cargo compartment.

DATES: We must receive comments on this proposed AD by January 18, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By 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 proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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–2004–19795; the directorate identifier for this docket is 2004–NM–196–AD.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Clint Jones, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6471; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19795; Directorate Identifier 2004–NM–196–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review 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.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

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 DMS receives them.

Discussion

We have received a report indicating that an aft cargo fire occurred during flight on a Model 777–300 series airplane. The crew discharged the fire bottles and diverted the airplane. After landing, ground crew discovered a smoldering blanket in some passenger luggage in the bulk cargo compartment. Investigation indicated that the passenger luggage had been stuffed against the cargo light assembly, which uses a halogen lamp. The halogen lamp was identified as the source of the ignition, which apparently occurred when the cargo doors were open and the lights were on. The cargo lamps are off during flight, but during the flight the blanket continued to smolder and was detected by the cargo smoke detection system. The heat from halogen lamps in contact with cargo could result in ignition of the cargo.

The light assemblies in the cargo compartments on Model 777–200 series airplanes also use halogen lamps, so both airplane models are subject to the unsafe condition identified in this proposed AD.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 777–33–0025, dated September 1, 2004. The service bulletin describes procedures for replacing the existing halogen lamps in the cargo compartment light assemblies with new incandescent lamps, and installing warning and identification placards for correct replacement lamps. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The Boeing service bulletin refers to Honeywell Service Bulletin 15–0712–33–0001 as an additional source of service information for the lamp replacement. The latest version of that service bulletin is Revision 1, dated October 15, 2004.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed below.

Differences Between the Proposed AD and the Service Bulletin

Boeing Special Attention Service Bulletin 777–33–0025 recommends replacing the lamps within 36 months, but this proposed AD would require an 18-month compliance time. Since the service bulletin was issued, we have re-evaluated the unsafe condition and determined that the shortened compliance time is necessary to satisfy all concerns regarding safety for the affected fleet. We have advised the manufacturer of the need to require an 18-month compliance time in lieu of the 36-month recommendation noted in the service bulletin. The manufacturer has acknowledged this adjustment. In developing the appropriate compliance time for this AD, we considered the urgency associated with the unsafe condition, the availability of required parts, and the practical aspect of replacing the lamps within a period of time that corresponds to the normal maintenance schedules of most affected operators. According to the lamp vendor, an adequate number of required parts will be available to modify the U.S. fleet within 18 months. We have determined that this compliance time represents the most appropriate time allowable for the affected airplanes to continue to safely operate before the modification is done, and will allow most affected operators to replace the lamps during scheduled maintenance.

Costs of Compliance

There are about 474 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Airplane model	Work hours	Average hourly labor rate	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
777–200 (Group 1)	5	$65	No cost to operators	$325	133	$43,225
777–300 (Group 2)	7	65	No cost to operators	*455	(**)	(*)

*The figures in this table would apply if an affected Model 777–300 series airplane is imported and placed on the U.S. Register in the future.
**None currently.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in

Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged 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 AD.

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2004–19795; Directorate Identifier 2004–NM–196–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by January 18, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; as listed in Boeing Special Attention Service Bulletin 777–33–0025, dated September 1, 2004.

Unsafe Condition

(d) This AD was prompted by a report of an aft cargo fire during flight. We are issuing this AD to prevent a fire in the cargo compartment.

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.

Lamp Replacement

(f) Within 18 months after the effective date of this AD, replace all halogen lamps in the cargo compartment ceiling light assemblies with new incandescent lamps, and install warning and identification placards; in accordance with Boeing Special Attention Service Bulletin 777–33–0025, dated September 1, 2004.

Parts Installation

(g) As of the effective date of this AD, no person may install a halogen bulb, part number 9203, in any airplane cargo ceiling light assembly.

Alternative Methods of Compliance (AMOCs)

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26665 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19796; Directorate Identifier 2004–NM–61–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –300, –400, and –400D Series Airplanes; and Model 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Boeing Model 747 series airplanes. That AD currently requires a one-time inspection to determine the material type of the stop support fittings of the main entry doors (MEDs). That AD also currently requires repetitive detailed inspections to detect cracks of certain stop support fittings of the MEDs, and replacement of any cracked stop support fitting with a certain new stop support fitting. This proposed AD would add new inspections and replacement if necessary of the stop support fittings of MED 3, and add airplanes to the applicability. This proposed AD is prompted by reports of MED 3 having certain stop support fittings which are susceptible to stress corrosion cracking. We are proposing this AD to detect and correct stress corrosion cracking of the stop support fittings of the MEDs, which could result in damage to the adjacent forward edge frame of the door and consequent loss of a MED and rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by January 18, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: 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 proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or 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.

FOR FURTHER INFORMATION CONTACT:

Technical information: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056;

telephone (425) 917–6437; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19796; Directorate Identifier 2004–NM–61–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of 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 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.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket 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 DMS receives them.

Discussion

On December 14, 1998, we issued AD 98–26–13, amendment 39–10954 (63 FR 70316, December 21, 1998), for certain Boeing Model 747–100, –100B, –200, –200B, –200C, –300, –400, and 747SR series airplanes having line numbers 1 through 830 inclusive. That AD requires a one-time inspection to determine the material type of the stop support fittings of the main entry doors (MEDs). That AD also currently requires repetitive detailed inspections to detect cracks of certain stop support fittings of the MEDs, and replacement of any cracked stop support fitting with a certain new stop support fitting. That AD was prompted by reports that stress corrosion cracking was found on certain stop support fittings of the MEDs. We issued that AD to detect and correct stress corrosion cracking of the stop support fittings of the MEDs, which could lead to failure of the stop support fittings, consequent loss of a MED, and rapid decompression of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 98–26–13, we received a report from the manufacturer that the new stop support fittings installed in production for MED 3 on airplanes after line number 830 may not have been made of the correct material type. In addition, the new stop support fittings supplied by Boeing as the replacement fitting for MED 3 may not have been made from the correct material type.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747–53–2485, dated January 8, 2004. The service bulletin describes procedures for performing a high frequency eddy current (HFEC) inspection to determine the material type of the stop support fittings of MED 3. The service bulletin also describes procedures for repetitive visual inspections to detect cracks of the stop support fittings (not made from 7075–T73 or 7050–T7451 material) of MED 3, and replacement of any cracked fitting with a new fitting made from 7075–T73 or 7050–T7451 material. In addition, the service bulletin describes procedures for optional replacement of the stop support fittings of the MEDs with stop support fittings made from 7075–T73 or 7050–T7451 material, which would eliminate the need for repetitive inspections. The new stop support fitting is less susceptible to stress corrosion cracking.

The FAA has reviewed Boeing Service Bulletin 747–53–2358, Revision 1, dated April 19, 2001 (the original issue, dated August 26, 1993, is referenced as the appropriate source of service information for accomplishing AD 98–26–13). Revision 1 of the service bulletin describes procedures for performing an HFEC inspection to determine the material type of the stop support fittings of the MEDs. The service bulletin also describes procedures for repetitive visual inspections to detect cracks of the stop support fitting (not made from 7075–T73 or 7050–T7451 material) of the MEDs, and replacement of any cracked fitting with a new fitting made from 7075–T73 or 7050–T7451 material. In addition, the service bulletin describes procedures for optional replacement of the stop support fittings of the MEDs with stop support fittings made from 7075–T73 or 7050–T7451 material, which would eliminate the need for repetitive inspections. The new stop support fitting is less susceptible to stress corrosion cracking.

We have determined that accomplishment of the actions specified in the service information will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would supersede AD 98–26–13. This proposed AD would continue to require a one-time inspection to determine the material type of the stop support fittings of the MEDs. This proposed AD would also continue to require repetitive detailed inspections to detect cracks of certain stop support fittings of the MEDs, and replacement of any cracked stop support fitting with a certain new stop support fitting. This proposed AD would also require new inspections and replacement if necessary of the stop support fittings of MED 3 and add airplanes to the applicability. This proposed AD would require you to use the service information described

previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and Service Bulletins.''

Differences Between the Proposed AD and Service Bulletins

For certain airplanes, Boeing Special Attention Service Bulletin 747–53–2485, dated January 8, 2004, specifies an inspection threshold of 6 years after the airplane was delivered or 18 months since the release of the service bulletin, whichever occurs later. However, for these same airplanes, paragraph (i) of the proposed AD specifies an inspection threshold of 72 months after the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, or 18 months after the effective date of the AD, whichever occurs later. This decision is based on our determination that the date the airplane was delivered may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

Whereas Boeing Service Bulletin 747–53–2358, dated August 26, 1993; and Boeing Service Bulletin 747–53–2358, Revision 1, dated April 19, 2001; specify a ''visual inspection,'' the intent of the proposed AD is to require a ''detailed inspection.'' Additionally, a note has been added to the proposed AD to define that inspection.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models. In paragraphs (f) and (g) of the proposed AD, the model designation ''747–100B SUD'' has been added. There is no increase in the number of applicable airplanes for these paragraphs.

Clarification of Inspection Type

Although Boeing Special Attention Service Bulletin 747–53–2485, dated January 8, 2004, specifies a ''detailed visual inspection,'' this proposed AD requires a ''detailed inspection.''

Clarification of Service Bulletin

Operators should also note that Boeing Service Bulletin 747–53–2358, Revision 1, dated April 19, 2001, specifies in the ''Action'' and ''Description'' paragraphs that you can end the repetitive inspections if you replace the stop support fittings with stop support fittings made from 7075–T73 or 7050–T7451 material. However, the Note under ''Stop Support Fitting Replacement'' of the Work Instructions of the service bulletin only specifies ending repetitive inspections if you replace with stop support fittings made from 7075–T73. Replacing with stop support fittings made of 7075–T73 or 7050–T7451 material does end the repetitive inspections as both are less susceptible to stress corrosion cracking.

Change to the Number of Airplanes in the Costs of Compliance

Operators should note that for AD 98–26–13 we estimated that there are about 575 airplanes of the affected design in the worldwide fleet and that about 164 airplanes of U.S. registry would be affected by that AD. However, for this proposed AD, which includes actions required by AD 98–26–13, we estimate that there are 814 airplanes of the affected design in the worldwide fleet and that 119 airplanes of U.S. registry would be affected by the proposed AD. The increase in the number of airplanes worldwide is due to the expanded applicability. The decrease in number of airplanes of U.S. registry may be due to a number of reasons such as retirement of airplanes and transfer of airplanes to foreign operators.

Change to Existing AD

This proposed AD would retain all requirements of AD 98–26–13. Since AD 98–26–13 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 98–26–13	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (l).

Costs of Compliance

There are about 814 airplanes of the affected design in the worldwide fleet. There are about 119 airplanes of U.S. registry that would be affected by this proposed AD. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per door
HFEC Inspection (required by AD 98–26–13)	1	$65	None	$65
Detailed Inspection as applicable (required by AD 98–26–13)	2	65	None	130
Optional Terminating Action (specified in AD 98–26–13)	124	65	$13,000	21,060
Detailed Inspection and HFEC Inspection as applicable (new proposed action)	3	65	None	195
Replacement as applicable (new proposed action)	120	65	17,724	25,524

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged 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 proposed AD.

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–10954 (63 FR 70316, December 21, 1998) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19796; Directorate Identifier 2004–NM–61–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by January 18, 2005.

Affected ADs

(b) This AD supersedes AD 98–26–13, amendment 39–10954.

Applicability

(c) This AD applies to Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –300, –400, and –400D series airplanes; and Model 747SR series airplanes; having line numbers 1 through 1301 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of main entry door (MED) 3 having certain stop support fittings which are susceptible to stress corrosion cracking. We are issuing this AD to detect and correct stress corrosion cracking of the stop support fittings of the MEDs which could result in damage to the adjacent forward edge frame of the door and consequent loss of a MED and rapid decompression 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.

Requirements of AD 98–26–13

Inspections and Corrective Action

(f) For Model 747–100, –100B, –100B SUD, –200, –200B, –200C, –300, –400, and 747SR series airplanes having line numbers 1 through 830 inclusive: Within 18 months after January 25, 1999 (the effective date of AD 98–26–13, amendment 39–10954), perform a high frequency eddy current (HFEC) inspection to determine the material type of the stop support fittings of the MEDs, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2358, dated August 26, 1993; or Boeing Service Bulletin 747–53–2358, Revision 1, dated April 19, 2001. Perform the inspection only at those locations where the material type of the stop support fittings is unknown, as specified in Figure 3, Table 1, of either service bulletin. As of the effective date of this AD, do the actions in accordance with Boeing Service Bulletin 747–53–2358, Revision 1, dated April 19, 2001.

(1) If the fitting is made from 7075–T73 or 7050–T7451 material, no further action is required by this AD for that fitting; however, the requirements of paragraph (l) of this AD still applies.

(2) If the fitting is not made from 7075–T73 or 7050–T7451 material, before further flight, perform a detailed inspection to detect cracks of the stop support fitting of the MEDs, in accordance with the applicable service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is ''an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

(i) If no crack is detected, repeat the detailed inspection thereafter at intervals not to exceed 36 months or 2,000 flight cycles, whichever occurs first.

(ii) If any crack is detected, before further flight, replace the fitting with a stop support fitting made from 7075–T73 or 7050–T7451 material, in accordance with the applicable service bulletin.

(g) For Model 747–100, –100B, –100B SUD, –200, –200B, –200C, –300, –400, and 747SR series airplanes having line numbers 1 through 830 inclusive: Replacement of the stop support fitting of the MEDs with a stop support fitting made from 7075–T73 material, in accordance with Boeing Service Bulletin 747–53–2358, dated August 26, 1993; or replacement with a stop support fitting made from 7075–T73 or 7050–T7451 material, in accordance with Boeing Service Bulletin 747–53–2358, Revision 1, dated April 19, 2001; constitutes terminating action for the repetitive inspection requirements of paragraph (f) of this AD for the replaced fitting. As of the effective date of this AD, only Boeing Service Bulletin 747–53–2358, Revision 1, dated April 19, 2001, may be used.

New Requirements of This AD

Inspection for Material Type

(h) For Model 747–100, –100B, –100B SUD, –200B, –200C, –300, –400, and –400D series airplanes, and Model 747SR series airplanes, having line numbers 1 through 830 inclusive on which the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53–2358, dated August 26, 1993; or Boeing Service Bulletin 747–53–2358, Revision 1, dated April 19, 2001; have been done: Do the inspection specified in paragraph (h)(1) or (h)(2) of this AD, as applicable, at the time specified.

(1) Except as provided by paragraph (h)(2) of this AD, if any stop support fitting, 2L through 6L and 2R through 6R, of MED 3, was replaced before the effective date of this AD: Perform a one-time HFEC inspection to determine the material type of the stop support fittings of MED 3 that were replaced, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2485, dated January 8, 2004, at the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Within 72 months after the stop support fitting of MED 3 was replaced.

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

(2) If any stop support fitting, 2L through 6L and 2R through 6R, of MED 3, cannot be determined conclusively by reviewing airplane maintenance records that the fitting was not replaced, within 18 months after the effective date of this AD, perform a one-time HFEC inspection to determine the material type of the stop support fitting, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2485, dated January 8, 2004.

(i) For airplanes having line numbers 831 through 1301 inclusive: At the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD, perform a one-time HFEC inspection to determine the material type of the stop support fittings of MED 3 in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2485, dated January 8, 2004.

(1) Before 72 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness.

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

No Further Action

(j) If, during any HFEC inspection required by paragraph (h) or (i) of this AD, any fitting is found to be made of 7075–T73 or 7050–T7451 material, no further action is required by this AD for that fitting; however, paragraph (l) of this AD still applies.

Initial and Repetitive Inspections for Cracking and Corrective Action

(k) If, during any HFEC inspection required by paragraph (h) or (i) of this AD, any fitting is found not to be made of 7075–T73 or 7050–T7451 material, before further flight, perform a detailed inspection for cracks of the fitting in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2485, dated January 8, 2004.

(1) If no crack is detected, repeat the detailed inspection specified in paragraph (k) of this AD thereafter at intervals not to exceed 36 months or 2,000 flight cycles, whichever comes first. Doing the replacement specified in paragraph (k)(2) of this AD ends the repetitive inspections for the replaced fitting.

(2) If any crack is detected, before further flight, replace the fitting with a fitting made of 7075–T73 or 7050–T7451 material in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2485, dated January 8, 2004. No further action is required by this AD for that fitting; however, paragraph (l) of this AD still applies.

Parts Installation

(l) As of the date specified in paragraph (l)(1) or (l)(2) of this AD, as applicable, no person shall install on any airplane a stop support fitting of the MEDs made from either 7079–T651 or 7075–T651 material.

(1) For airplanes having line numbers 1 through 830 inclusive: As of January 25, 1999.

(2) For airplanes having line numbers 831 through 1301 inclusive: As of the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs, approved previously per AD 98–26–13, amendment 39–10954, are approved as AMOCs with paragraph (f) or (g) of this AD, as applicable. However, any stop support fitting, 2L through 6L and 2R through 6R, of MED 3 that was replaced is still required to be inspected as required in paragraph (h) of this AD.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26664 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19410; Airspace Docket No. 04–ANM–09]

RIN 2120–AA66

Proposed Revision of Federal Airways V–2, V–257 and V–343; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise three Very High Frequency Omnidirectional Range (VOR) Federal airways southeast of Missoula, MT (V–2, V–257, and V–343). These VOR Federal airways are being impacted due to the decommissioning of the Drummond VOR and would be revised or eliminated by this proposed action.

DATES: Comments must be received on or before January 18, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2004–19410 and Airspace Docket No. 04–ANM–09, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2004–19410 and Airspace Docket No. 04–ANM–09) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2004–19410 and Airspace Docket No. 04–ANM–09.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Drummond VOR has been out of service since April 2003, for the reasons discussed below, and the site on which the VOR was located was leased land. In 2002, the FAA learned that the landowner had constructed a house within 1,000 feet of the VOR without providing proper notice to the FAA. The VOR was temporarily taken out of service until the impacts of the house could he identified. A subsequent flight

check of the VOR indicated that the house did not cause a problem; however, large vehicles parked near the VOR facility were interfering with the integrity of the signal. As such, portions of the airways have been NOTAMed out of service. Additionally, subsequent to this NOTAM action the Drummond VOR was decommissioned on January 13, 2004.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to revise V–2, V–257, and V–343 southeast of Missoula, MT. Specifically, this notice is proposing to eliminate segments of V–2 and V–343. It would also establish new airway segments on V–2 (between Missoula, MT, and Helena, MT) and V–257 (between SCAAT intersection and the Coppertown VOR).

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 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 FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–2 [Revised]

From Seattle, WA; Ellensburg, WA; Moses Lake, WA; Spokane, WA; Mullan Pass, ID; Missoula, MT; Helena, MT; INT Helena 119° and Livingston, MT, 322° radials; Livingston; Billings, MT; Miles City, MT; 24 miles, 90 miles, 55 MSL, Dickinson, ND; 10 miles, 60 miles, 38 MSL, Bismarck, ND; 14 miles, 62 miles, 34 MSL, Jamestown, ND; Fargo, ND; Alexandria, MN; Gopher, MN; Nodine, MN; Lone Rock, WI; Madison, WI; Badger, WI; Muskegon, MI; Lansing, MI; Salem, MI; INT Salem 093° and Aylmer, ON, Canada, 254° radials; Aylmer; INT Aylmer 086° and Buffalo, NY, 259° radials; Buffalo; Rochester, NY; Syracuse, NY; Utica, NY; Albany, NY; INT Albany 084° and Gardner, MA, 284° radials; to Gardner. The airspace within Canada is excluded.

* * * * *

V–257 [Revised]

From Phoenix, AZ, via INT Phoenix 348° and Drake, AZ, 141° radials; Drake; INT Drake 003° and Grand Canyon, AZ, 211° radials; Grand Canyon; 38 miles 12 AGL, 24 miles 125 MSL, 16 miles 95 MSL, 26 miles 12 AGL, Bryce Canyon, UT; INT Bryce Canyon 338° and Delta, UT, 186° radials, Delta; 39 miles, 105 MSL INT Delta 004° and Malad City, ID, 179° radials; 20 miles, 118 MSL, Malad City; Pocatello, ID; DuBois, ID; Dillon, MT; Coppertown, MT; INT 002° and Great Falls, MT, 222° radials; Great Falls; 73 miles, 56 MSL, Havre, MT. The airspace within Restricted Area R–6403 is excluded.

* * * * *

V–343 [Revised]

From Dubois, ID; Bozeman, MT.

* * * * *

Issued in Washington, DC, November 26, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–26585 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–124]

RIN 1625–AA09

Drawbridge Operation Regulations; Skidaway Bridge (SR 204), Intracoastal Waterway, Mile 592.9, Savannah, Chatham County, GA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Skidaway Bridge (SR 204) across the Intracoastal Waterway, mile 592.9 in Savannah, Georgia. This proposed rule would allow the drawbridge to not open from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., daily. Due to the amount of vehicle traffic and the lack of openings during the requested time period, this proposed action would improve the movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic. Public vessels of the United States, tugs with tows, and vessels in distress would be passed at anytime.

DATES: Comments and related material must reach the Coast Guard on or before February 1, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL, 33131–3050, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gwin Tate, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6747.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–04–124), indicate the specific section of this document to which each comment applies, and give the reason for each

comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The operation of the Skidaway Bridge (SR 204), mile 592.9, at Savannah, is governed by 33 CFR 117.5 which requires the draw to open on signal. On April 22, 2004, Chatham County requested that the Coast Guard review the existing regulation governing the operation of the Skidaway Bridge, because the County contended that the regulation was not meeting the needs of vehicle traffic. The Coast Guard proposes to make the recommended schedule permanent. This recommended schedule will meet the reasonable needs of navigation and improve vehicular traffic movement.

Discussion of Proposed Rule

The Coast Guard proposes to modify the existing bridge operating regulation and create a permanent rule that would allow the Skidaway Bridge to remain closed from 6:30 a.m. to 9 a.m. and from 4:30 p.m. to 6:30 p.m. daily. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at anytime.

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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposed rule would modify the existing bridge schedule to allow for efficient vehicle traffic flow and still meet the reasonable needs of navigation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the Intracoastal Waterway in the vicinity of the Skidaway Bridge, persons intending to drive over the bridge and nearby business owners. This regulation would not have a significant economic impact on a substantial number of small entities because the movement of vehicular traffic will be significantly improved while at the same time the impact to vessel traffic is for short and reasonable durations. Moreover, Public vessesl of the United States, tugs with tows, and vessels in distress would be passed at anytime.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (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 affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, 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 proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. The rule fits within paragraph (32)(e) because it promulgates operating regulations or procedures for a drawbridge. Under figure 2–1, paragraph (32)(e) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.353, paragraph (c) is added to read as follows:

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

* * * * *

(c) Skidaway Bridge, SR 204, mile 592.9 near Savannah. The draw shall open on signal, except that from 6:30 a.m. to 9 a.m. and 4:30 p.m. and 6:30 p.m., Monday through Friday, the draw need not open. The draw shall open on signal on Federal holidays.

Dated: November 23, 2004.

David B. Peterman,

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

[FR Doc. 04–26587 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–210]

RIN 1625–AA00

Security Zone; Potomac and Anacosta Rivers, Washington, DC and Arlington and Fairfax Counties, Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary security zone from January 14 through January 25, 2005, encompassing certain waters of the Potomac and Anacosta Rivers in order to safeguard a large number of high-ranking officials and spectators from terrorist acts and incidents. This action is necessary to provide for the security of persons and property, and prevent terrorist acts or incidents during the 2005 Presidential Inauguration activities in Washington, DC. This rule would prohibit vessels and persons from entering the security zone and require vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: Comments and related material must reach the Coast Guard on or before January 3, 2005.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Branch, Baltimore, Maryland 21226–1791. Coast Guard Activities Baltimore, Waterways Management Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Activities Baltimore, Waterways Management Branch, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–04–210), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. If, as we anticipate, we make this temporary final rule effective less than 30 days after publication in the **Federal Register**, we will explain in that publication, as required by 5 U.S.C. (d)(3), our good cause for doing so.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request

for a meeting by writing to Coast Guard Activities Baltimore, Waterways Management Branch, 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 separate notice in the **Federal Register**.

Background and Purpose

The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–06 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead Federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore proposes to establish a security zone for the 2005 Presidential Inauguration activities in Washington, DC to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a large gathering of high-ranking officials and spectators in Washington, DC, would have. This security zone applies to all waters of the Potomac River from shoreline to shoreline bounded by the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin, from January 14 through January 25, 2005. Vessels underway at the time this security zone is implemented will immediately proceed out of the zone. We will issue Broadcast Notices to Mariners to further publicize the security zone. This security zone is issued under authority contained in 50 U.S.C. 191 and 33 U.S.C. 1226.

Except for Public vessels and vessels at berth, mooring or at anchor, this rule temporarily requires all vessels in the designated security zone as defined by this rule to depart the security zone. However, the Captain of the Port may, in his discretion grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

Discussion of Proposed Rule

On Thursday, January 20, 2005, the U.S. Presidential Inauguration will take place at the U.S. Capitol in Washington, DC. The 2005 Presidential Inauguration activities will include several Inaugural balls, parades and receptions. The security zone will be in effect from January 14 through January 25, 2005.

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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

The operational restrictions of the security zone are tailored to provide the minimal interruption of vessel operations necessary to provide immediate, improved security for persons, vessels, and the waters of the Potomac River in Washington, DC. Additionally, this security zone is temporary in nature and vessels and facilities can the Captain of the Port for a waiver of the requirements of the security zone. Any hardships experienced by persons or vessels are outweighed by the national interest in protecting high ranking officials and the public at large from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit on a portion of the Potomac River, from the surface to the bottom, from the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, including the waters of the Anacostia River downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin. This security zone will not have a significant economic impact on a substantial number of small entities because vessels with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, 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.

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. 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 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–210 to read as follows:

§ 165.T05–210 Security Zone; Potomac River, Washington, DC and Arlington and Fairfax Counties, Virginia.

(a) *Definitions.* For the purposes of this section, *Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Activities Baltimore, Maryland and any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, U.S. Coast Guard Activities Baltimore, Maryland to act as a designated representative on his or her behalf.

(b) *Location.* The following area is a security zone: All waters of the Potomac River, from shoreline to shoreline, bounded by the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, and all waters of the Anacostia River, from shoreline to shoreline, downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin.

(c) *Regulations.* (1) The general regulations governing safety zones found in § 165.33 of this part apply to the security zone described in paragraph (b).

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone are to depart the security zone. However, the Captain of the Port may, in his discretion grant

waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore and proceed at the minimum speed necessary to maintain a safe course while within the zone.

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

(d) *Effective period.* This section will be effective from 4 a.m. local time on January 14, 2005, through 10 p.m. local time on January 25, 2005.

Dated: November 23, 2004.

Curtis A. Springer,

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

[FR Doc. 04–26669 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–15–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–3, and 51–4

[Docket No. 2004–01–02]

RIN 3037–AA00

Governance Standards for Central Nonprofit Agencies and Nonprofit Agencies Participating in the Javits-Wagner-O'Day Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (The Committee), which is responsible for administering and overseeing the implementation of the Javits-Wagner-O'Day (JWOD) Act, is extending the comment period for the proposed rule to require nonprofit agencies awarded Government contracts under the authority of the JWOD Act, as well as central nonprofit agencies designated by the Committee and nonprofit agencies that would like to qualify for participation in the JWOD Program, to comply with new governance standards. This action will allow interested persons more time to prepare and submit comments.

DATES: Submit your written comments on the proposed rule on or before February 10, 2005. No public meeting will be held.

ADDRESSES: Send your comments on the proposed rule in one of the following ways:

- By electronic mail (preferred method) to *rulecomments@jwod.gov;*
- By fax, to the attention of G. John Heyer, to (703) 603–0655;
- By postal mail to Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202–3259; or
- Through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions on the site for submitting comments.

For more information on how to submit your comments, please refer to the ''Public Comments Solicited'' section in the proposed rule.

Comments will be made available for public inspection, from 9 a.m. to 4 p.m. on weekdays, at the Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202–3259.

FOR FURTHER INFORMATION CONTACT: G. John Heyer, by telephone at (703) 603–0665, by fax at (703) 603–0655, by e-mail at *jheyer@jwod.gov,* or by postal mail at Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA, 22202–3259.

SUPPLEMENTARY INFORMATION: On November 12, 2004, the Committee published in the **Federal Register** (69 FR 65395–65401, Docket No. 2004–01–01) a proposed rule to require nonprofit agencies awarded Government contracts under the authority of the JWOD Act, as well as central nonprofit agencies designated by the Committee and nonprofit agencies that would like to qualify for participation in the JWOD Program, to comply with new governance standards, including standards concerning the practices of boards of directors and the reasonableness of executive and other employee compensation.

Comments on the proposed rule were required to be received on or before January 11, 2005. The Committee is extending the comment period on Docket No. 2004–01–01 for an additional 30 days, ending February 10, 2005. This action will allow interested persons additional time to prepare and submit comments. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

Authority: 41 U.S.C. 46–48c.

Dated: November 23, 2004.

Leon A. Wilson, Jr.,

Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

[FR Doc. 04–26651 Filed 12–2–04; 8:45 am]

BILLING CODE 6353–01–P

Notices

Federal Register

Vol. 69, No. 232

Friday, December 3, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–101–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection associated with health certificates for the export of live crustaceans, finfish, mollusks, and related products.

DATES: We will consider all comments that we receive on or before February 1, 2005.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* 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 you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–101–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–101–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–101–1'' on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

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

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

FOR FURTHER INFORMATION CONTACT: For information on health certificates for the export of live crustaceans, finfish, mollusks, and related products, contact Ms. Jill B. Rolland, Fishery Biologist, Certification and Control Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737; (301) 734–6479. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Health Certificates for Export of Live Crustaceans, Finfish, Mollusks, and Related Products.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Many countries that import animals or animal products from the United States require a certification that the United States is free of certain diseases. These countries may also require the certification statement to contain additional declarations regarding the U.S. animals or products being exported.

The regulations governing the export of animals and products from the United States are contained in 9 CFR part 91, subchapter D, ''Exportation and Importation of Animals (Including Poultry) and Animal Products,'' and apply to farm-raised aquatic animals and products, as well as other livestock and products. These regulations are authorized by the Animal Health Protection Act (7 U.S.C. 8301–8317).

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Fish and Wildlife Service (FWS), U.S. Department of the Interior, as well as APHIS, have legal authorities and responsibilities related to aquatic animal health in the United States. All three agencies have, therefore, entered into a memorandum of understanding delineating their respective responsibilities in the issuance of health certificates for the export of live aquatic animals and animal products.

As a result of these shared responsibilities, three new health certificates have been developed that will bear the logo of all three agencies. The certificates can be used by all three agencies for export health certifications for live crustaceans, finfish, mollusks, and their related products from the United States. In order for the agencies to complete these certificates, exporters must provide the names of the species being exported from the United States, their age and weight, if applicable, whether they are cultured stock or wild stock, their place of origin, their country of destination, and the date and method of transport. The certificates will be completed by an accredited inspector (in the case of FWS or NMFS) or accredited veterinarian (in the case of APHIS) and must be signed by either the accredited inspector or accredited veterinarian who inspects the animals or products prior to their departure from the United States, as well as the appropriate Federal official (from either APHIS, FWS, or NMFS) who certifies the health status of the shipment being exported.

By endorsing the health certificate, these officials are certifying that (1) the aquatic animals or products in the consignment have been produced in a country, zone, or aquaculture establishment that has been subjected to a health surveillance scheme recommended by the Office International des Epizooties (the world animal health organization); and (2) the country, zone, or aquaculture establishment is officially recognized as being free from all of the pathogens causing the diseases identified on the specific health certificate being endorsed. (Each of the three health certificates lists a variety of diseases, depending on whether the certificate is for crustaceans, finfish, or mollusks.)

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Accredited inspectors or accredited veterinarians who complete the health certificates and producers who provide information for the health certificates to the accredited inspectors or accredited veterinarians.

Estimated annual number of respondents: 100.

Estimated annual number of responses per respondent: 30.

Estimated annual number of responses: 3,000.

Estimated total annual burden on respondents: 1,500 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 24th day of November 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–26592 Filed 12–2–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–125–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the possession, use, and transfer of biological agents and toxins that have the potential to pose a severe threat to human and animal health, to animal health, to plant health, or to animal products and plant products.

DATES: We will consider all comments that we receive on or before February 1, 2005.

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

- EDOCKET: Go to *http://www.epa.gov/feddocket* 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 you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–125–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–125–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–125–1'' on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding the select agent registration process associated with the possession, use, or transfer of biological agents and toxins in 7 CFR part 331, contact Ms. Gwendolyn Burnett, Regulatory Permit Specialist, Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–7211.

For information regarding the select agent registration process associated with the possession, use, or transfer of biological agents and toxins in 9 CFR part 121, contact Dr. Monica Brown-Reid, Select Agent Program Manager, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–3399.

For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Select Agent Registration.

OMB Number: 0579–0213.

Type of Request: Extension of approval of an information collection.

Abstract: On June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188). Title II of that Act provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (HHS) (subtitle A, sections

201–204) and the Department of Agriculture (USDA) (subtitle B, sections 211–213). Under section 212 of the Act, the Secretary of Agriculture must establish regulations governing the possession, use, and transfer of listed biological agents and toxins in order to protect animal and plant health, and animal and plant products. The Animal and Plant Health Inspection Service is the USDA agency with primary responsibility for establishing and enforcing regulations in 7 CFR part 331 and 9 CFR part 121 associated with the possession, use, and transfer of those biological agents and toxins under USDA's jurisdiction.

APHIS regulations require an individual or entity (unless specifically exempted under the regulations) to register with APHIS or, for overlap agents or toxins (affecting both humans and animals), APHIS or the Centers for Disease Control and Prevention, HHS, in order to possess, use, or transfer biological agents or toxins.

To register, an individual or entity must submit a registration application package; develop and implement a Biocontainment and Security Plan or Biosafety and Security Plan, as applicable; and request access approval for individuals who have been identified as having a legitimate need to handle or use listed agents or toxins and who have the appropriate training and skills to handle or use such agents or toxins.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.5442 hours per response.

Respondents: Researchers, universities, research and development organizations, diagnostic laboratories and other interested parties who possess, use, or transfer agents or toxins deemed a severe threat to animal or plant health, or to animal or plant products.

Estimated annual number of respondents: 490.

Estimated annual number of responses per respondent: 2.6327.

Estimated annual number of responses: 1,290.

Estimated total annual burden on respondents: 1,992 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–3453 Filed 12–2–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, December 13, 2004. The Madera Resource Advisory Committee will meet at the Bass Lake Ranger District Office, North Fork, CA 93643. The purpose of the meeting is: Review FY 2004 RAC proposals.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, December 13, 2004. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Bass Lake Ranger District Office, 57003 Road 225, North Fork, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, USDA, Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review of procedures for approval of 2005 RAC proposals; (2) discussion of types of projects to be solicited by the committee.

Dated: November 29, 2004.

Mark Lemon,

Acting District Ranger for Bass Lake Ranger District.

[FR Doc. 04–26653 Filed 12–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine (DLT) Program grant application window for funding during fiscal year (FY) 2005 subject to the availability of funding. FY 2004 funding for the DLT grant program was approximately $24.6 million. This notice is being issued prior to passage of a final appropriations bill to allow applicants sufficient time to submit proposals and give RUS maximum time to process applications within the current fiscal year. A Notice of Funding Availability will be published announcing the funding level for the DLT grant program once an appropriations bill providing funding for DLT grants has been enacted. Expenses incurred in developing applications will be at the applicant's risk.

In addition to announcing application windows, RUS announces the minimum and maximum amounts for DLT grants applicable for the fiscal year.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight *no later* than February 1, 2005, to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.
- Electronic copies must be received by February 1, 2005, to be eligible for

FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.

• RUS will examine applications for items that would disqualify them from consideration if the applications are submitted on paper by January 3, 2005.

ADDRESSES: You may obtain application guides and materials for the DLT grant program via the Internet at the DLT Web site: *http://www.usda.gov/rus/telecom/dlt/dlt.htm.* You may also request application guides and materials from RUS by contacting the DLT Program at (202) 720–0413.

Submit completed paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division, Telecommunications Program.''

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron, III, Director, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 720–0413, fax: (202) 720–1051.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Distance Learning and Telemedicine Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.855.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

• Paper copies must be postmarked and mailed, shipped, or sent overnight no later than February 1, 2005, to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.

• Electronic copies must be received by February 1, 2005, to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.

• RUS will examine applications for items that would disqualify them from consideration if the applications are submitted on paper by January 3, 2005.

Items in Supplementary Information:

I. Funding Opportunity: Brief introduction to the DLT program
II. Minimum and Maximum Application Amounts
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility
IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible
V. Application Review Information: considerations and preferences, scoring criteria, review standards, selection information
VI. Award Administration Information: Award notice information, award recipient reporting requirements
VII. Agency Contacts: Web, phone, fax, e-mail, contact name

I. Funding Opportunity

Distance learning and telemedicine grants are specifically designed to provide access to education, training and health care resources for people in rural America. The Distance Learning and Telemedicine (DLT) Program (administered by the Universal Services Branch of the Rural Utilities Service (RUS)) funds the use of advanced telecommunications technologies to help communities meet those needs.

The grants, which are awarded through competitive process, may be used to fund telecommunications, computer networks and related advanced technologies.

II. Maximum and Minimum Amount of Grant Applications

Under 7 CFR 1703.124, the Administrator has determined the maximum amount of an application for a grant in FY 2005 is $500,000 and the minimum amount of a grant is $50,000.

RUS will make awards and execute documents appropriate to the project after an appropriations bill has been enacted for FY 2005 and prior to any advance of funds to successful applicants.

DLT grants cannot be renewed. Award documents specify the term of each award. Applications to extend existing projects are welcomed (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who is eligible for grants? (*See* 7 CFR 1703.103.)

1. Only entities legally organized as one of the following are eligible for DLT grants:

a. An incorporated organization or partnership,

b. An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c),

c. A state or local unit of government,

d. A consortium, as defined in 7 CFR 1703.102, or

e. Other legal entity, including a private corporation organized on a for-profit or not-for profit basis.

2. Individuals are not eligible for DLT grants directly.

3. Electric and telecommunications borrowers under the Rural Electrification Act of 1936 (7 U.S.C. 950aaa *et seq.*) are not eligible for grants.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions.

See Section IV of this notice and 7 CFR 1703.125(g) for information on documentation of matching contributions.

a. Grant applicants must demonstrate a matching contribution, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of RUS financial assistance requested. Matching contributions *must* be used for eligible purposes of DLT grant assistance (*see* 7 CFR 1703.121 and paragraph IV.G of this notice). Greater amounts of eligible matching contributions may increase an applicant's score (*see* 7 CFR 1703.126(b)(4) and paragraph V.B.2.d of this notice).

2. The DLT grant program is designed to flow the benefits of distance learning and telemedicine to residents of rural America (*see* 7 CFR 1703.103(a)(2)). Therefore, in order to be eligible, applicants must propose to use the financial assistance to:

a. Operate a rural community facility; or

b. Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas, at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

4. Rurality.

a. All projects that applicants propose to fund with RUS grant assistance must meet a minimum rurality threshold, to ensure that benefits from the projects flow to rural residents. The minimum eligibility score is 20 points. Please see Section IV of this notice and 7 CFR 1703.126(a)(2) for an explanation of the rurality scoring and eligibility criterion.

b. Each application must apply the following criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, in order to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores.

Criterion	Character	Population	DLT points
Exceptionally Rural Area	Area not within a city, village or borough	≤5000	45
Rural Area	incorporated or unincorporated area	>5000 and ≤10,000	30
Mid-Rural Area	incorporated or unincorporated area	>10,000 and ≤20,000	15
Urban Area	incorporated or unincorporated area	>20,000	0

c. The rurality score is one of the competitive scoring criteria applied to grant applications.

5. Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*) are not eligible for grants from the DLT Program. Please *see* 7 CFR 1703.123(a)(11).

C. See paragraph IV.B of this notice for a discussion of the items that make up a completed application. You may also refer to 7 CFR 1703.125 for completed grant application items.

IV. Application and Submission Information

A. *Where to get application information.* Application guides, copies of necessary forms and samples, and the DLT Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/dlt/dlt.htm,* or *http://www.grants.gov.*

2. The DLT Program of RUS for paper copies of these materials: (202) 720–0413.

B. *What constitutes a completed application?*

1. Detailed information on each item in the table in paragraph IV.B.6 of this notice can be found in the sections of the DLT Program regulation listed in the table, and the DLT grant application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide.

a. When the table refers to a narrative, it means a written statement, description or other written material prepared by the applicant, for which no form exists. RUS recognizes that each project is unique and requests narratives of varying complexity to allow applicants to fully explain their request for financial assistance.

b. When documentation is requested, it means letters, certifications, legal documents or other third-party documentation that provide evidence that the applicant meets the listed requirement. For example, to confirm Enterprise Zone (EZ) designations, applicants use various types of documents, such as letters from appropriate government bodies and copies of appropriate USDA Web pages. Leveraging documentation sometimes include letters of commitment from other funding sources, or other documents specifying in-kind donations. Evidence of legal existence is sometimes proven by applicants who submit articles of incorporation. None of the foregoing examples is intended to limit the types of documentation that may be submitted to fulfill a requirement. DLT Program regulations and the application guide provide specific guidance on each of the items in the table.

2. The DLT application guide and ancillary materials provide all necessary forms and sample worksheets.

3. While the table in paragraph IV.B.6 of this notice includes all items of a completed application for each program, RUS may ask for additional or clarifying information if the submitted items do not fully address a criterion or other provision. RUS will communicate with applicants if the need for additional information arises.

4. Submit the required application items in the order provided in the application guide.

5. DUNS Number. As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see Grants.gov for more information on how to obtain a DUNS number or how to verify your organization's number.

6.—TABLE OF REQUIRED ELEMENTS OF A COMPLETED GRANT APPLICATION

Application item	REQUIRED items	
	Grants (7 CFR 1703.125 and CFR 1703.126)	Notes
SF–424 (Application for Federal Assistance form)	Yes	*Completely* filled out.
Executive Summary	Yes	Narrative.
Objective Scoring Worksheet	Yes	Recommend using the RUS worksheet.
Rural Calculation Table	Yes	Recommend using the RUS worksheet.
National School Lunch Program Determination	Yes	Recommend using the RUS worksheet; must include source documentation.
EZ/EC or Champion Communities designation	Yes	Documentation.
Documented Need for Services/Benefits Derived from Services	Yes	Narrative & documentation, if necessary.
Innovativeness of the Project	Yes	Narrative & documentation.
Budget	Yes	Table or spreadsheet; Recommend using the RUS format.
Leveraging Evidence and Funding Commitments from All Sources	Yes	Documentation.
Financial Information/Sustainability	Yes	Narrative.
System/Project Cost Effectiveness	Yes	Narrative & documentation.
Telecommunications System Plan	Yes	Narrative & documentation; maps or diagrams, if appropriate.
Proposed Scope of Work	Yes	Narrative or other appropriate format.

6.—TABLE OF REQUIRED ELEMENTS OF A COMPLETED GRANT APPLICATION—Continued

Application item	REQUIRED items	
	Grants (7 CFR 1703.125 and CFR 1703.126)	Notes
Statement of Experience	Yes	Narrative 3-page, single-spaced limit.
Consultation with the USDA State Director, Rural Development	Yes	Documentation.
Application conforms with State Strategic Plan per USDA State Director, Rural Development, (if plan exists).	Yes	Documentation.
Certifications:		
Equal Opportunity and Nondiscrimination	Yes	Recommend using the RUS sample form.
Architectural Barriers	Yes	Recommend using the RUS sample form.
Flood Hazard Area Precautions	Yes	Recommend using the RUS sample form.
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Yes	Recommend using the RUS sample form.
Drug-Free Workplace	Yes	Recommend using the RUS sample form.
Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.	Yes	Recommend using the RUS sample form.
Lobbying for Contracts, Grants, Loans, and Cooperative Agreements	Yes	Recommend using the RUS sample form.
Non-Duplication of Services	Yes	Recommend using the RUS sample form.
Environmental Impact/Historic Preservation Certification	Yes	Recommend using the RUS sample form.
Federal Obligations on Delinquent Debt	Yes	Recommend using the RUS sample form.
Evidence of Legal Authority to Contract with the Government (documentation).	Yes	Recommend using the RUS sample form.
Evidence of Legal Existence (documentation)	Yes	Recommend using the RUS sample form.
Supplemental Information (if any)	Optional	Narrative, documentation or other appropriate format.

C. *How many copies of an application are required?*

1. Applications submitted on paper:

a. Submit the original application and two (2) copies to RUS.

b. Submit one (1) additional copy to the State government point of contact (if one has been designated) at the same time as you submit the application to RUS. See *http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government points of contact or contact the DLT branch.

2. Electronically submitted applications:

a. The additional paper copies for RUS specified in 7 CFR 1703.128(c) and 7 CFR 1703.136(b) are not necessary if you submit the application electronically through *Grants.gov.*

b. Submit one (1) copy to the State government point of contact (if one has been designated) at the same time as you submit the application to RUS. *See http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government points of contact.

D. *How and where to submit an application.* Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked ''Attention: Director, Advanced Services Division, Telecommunications Program.''

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents and delay delivery of your application to the DLT program. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications:

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. If you want RUS to review your application for items that would disqualify it for further consideration (*see* paragraph V.D of this notice), please do not use Grants.gov. Submit your application on paper. Grants.gov does not yet support such pre-application reviews.

d. How to use Grants.gov:

e. Grants.gov contains full instructions on all required passwords, credentialing and software.

(i) Central Contractor Registry. In addition to the DUNS number required of all grant applicants, submitting an application through Grants.gov requires that you list your organization in the Central Contractor Registry (CCR). Setting up a CCR listing (a one-time procedure with annual updates) takes up to five business days, so RUS strongly recommends that you obtain your organization's DUNS number and

CCR listing well in advance of the deadline specified in this notice.

(ii) Credentialing and authorization of applicants. Grants.gov will also require some one-time credentialing and online authentication procedures. These procedures may take several business days to complete, further emphasizing the need for early action to complete the sign-up, credentialing and authorization procedures at Grants.gov before you submit an application at that Web site.

f. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadlines.

g. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

E. *Deadlines.*

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than February 1, 2005, to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.

2. Electronic grant applications must be received by February 1, 2005, to be eligible for FY 2005 funding. Late applications are not eligible for FY 2005 grant funding.

3. RUS will examine applications for items that would disqualify them from consider if the applications are submitted on paper by January 3, 2005.

F. *Intergovernmental Review.* The DLT grant program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' As stated in paragraph IV.C of this notice, a copy of a DLT grant application must be submitted to the State single point of contact if one has been designated. Please *see http://www.whitehouse.gov/omb/grants/spoc.html* to determine whether your state has a single point of contact.

G. *Funding Restrictions.*

1. *Eligible purposes.*

a. End-user sites may receive financial assistance; hub sites (rural or non-rural) may also receive financial assistance if they are necessary to provide DLT services to end-user sites. Please *see* 7 CFR 1703.101(h).

b. To fulfill the policy goals laid out for the DLT Program in 7 CFR 1703.101, the following table lists purposes for financial assistance and whether each purpose is eligible for the assistance. Please consult the application guide and the regulations (7 CFR 1703.102 for definitions, in combination with the portions of the regulation cited in the table for each type of financial assistance) for detailed requirements for the items in the table. RUS *strongly* recommends that applicant exclude ineligible items from the grant and match portions of their project budgets. However, some items ineligible for funding or matching contributions may be vital to the project. RUS encourages applicants to document those costs in the application budget. Please *see* the application guide for a sample, recommended budget format.

	Grants (7 CFR 1703.121 and 7 CFR 1703.123)
Lease or purchase of eligible DLT equipment and facilities	Yes—equipment only.
Acquire instructional programming	Yes.
Technical assistance, develop instructional programming, engineering or environmental studies	Yes, not to exceed 10% of the grant.
Medical or education equipment or facilities necessary to the project	No.
Vehicles using distance learning or telemedicine technology to deliver services	No.
Teacher-student links located at the same facility	No, if this is the sole project objective.
Links between medical professionals located at the same facility	No, if this is the sole project objective.
Site development or building alteration	No.
Land or building purchase	No.
Building construction	No.
Acquiring telecommunications transmission facilities	No.
Salaries, wages, benefits for medical or educational personnel	No.
Salaries/administrative expenses of applicant or project	No.
Recurring project costs or operating expenses	No. Equipment leases are eligible. Telecommunications connection charges are *not* eligible.
Equipment to be owned by the LEC or other telecommunications service provider, if the provider is the applicant.	Yes.
Duplicate distance learning or telemedicine services	No.
Any project that, for its success, depends on additional DLT financial assistance or other financial assistance that is not assured.	No.
Application preparation costs	No.
Other project costs not covered in regulation	No.
Costs & facilities providing distance learning broadcasting	No.
Reimburse applicant or others for costs incurred prior to RUS receipt of completed application	No.

2. *Eligible Equipment & Facilities.* Please see 7 CFR 1703.102 for definitions of eligible equipment, eligible facilities and telecommunications transmission facilities as used in the table above.

V. Application Review Information

A. Special Considerations or Preferences

1. American Samoa, Guam, Virgin Islands, and Northern Mariana Islands applications are exempt from the matching requirement up to a match amount of $200,000 (*see* 48 U.S.C. 1469a; 91 Stat. 1164).

B. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria (total possible points: 235) *See* 7 CFR 1703.125 for the items that will be reviewed during scoring, and 7 CFR 1703.126 for scoring criteria.

a. Need for services proposed in the application, and the benefits that will be derived if the application receives a grant (up to 55 points).

b. Rurality of the proposed service area (up to 45 points).

c. Percentage of students eligible for the National School Lunch Program (NSLP) in the proposed service area (demonstrates economic need of the area) (up to 35 points).

d. Leveraging resources above the required matching level (up to 35 points). Please see paragraph III.B.1.a of this notice for a brief explanation of matching contributions.

e. Level of innovation demonstrated by the project (up to 15 points).

f. System cost-effectiveness (up to 35 points).

g. Project overlap with Empowerment Zone, Enterprise Communities or Champion Communities designations (up to 15 points).

C. Review Standards

1. In addition to the scoring criteria that rank applications against each other, RUS evaluates grant applications for possible awards on the following items, according to 7 CFR 1703.127:

a. Financial feasibility.

b. Technical considerations. If the application contains flaws that would prevent the successful implementation, operation or sustainability of a project, RUS will not award a grant.

c. Other aspects of proposals that contain inadequacies that would undermine the ability of the project to comply with the policies of the DLT Program.

D. As a courtesy, RUS will examine, provide comment, and return applications that include items that would disqualify them from further consideration for modification, if the applications are submitted by January 3, 2005. If you want RUS to examine your application in this manner, please submit your application on paper. Grants.gov does not currently support this kind of pre-application review.

E. Selection Process

Grant applications are ranked by final score, and by application purpose (education or medical). RUS selects applications based on those rankings, subject to the availability of funds. RUS may allocate grant awards between medical and educational purposes, but is not required to do so. In addition, RUS has the authority to limit the number of applications selected in any one State during a fiscal year. *See* 7 CFR 1703.127.

VI. Award Administration Information

A. Award Notices

Awards will be made and notices sent only after an appropriations bill has been enacted for FY 2005 funding the DLT grant program. RUS generally notifies applicants whose projects are selected for awards by faxing an award letter. RUS follows the award letter with a grant agreement that contains all the terms and conditions for the grant. RUS recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement, within 120 days of the selection date.

B. Administrative and National Policy Requirements

The items listed in Section IV of this notice, and the DLT Program regulation, application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. *Performance reporting.* All recipients of DLT financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting DLT Program objectives. *See* 7 CFR 1703.107.

2. *Financial reporting.* All recipients of DLT financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please *see* 7 CFR 1703.108.

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/telecom/dlt/dlt.htm*. The RUS' DLT Web site maintains up-to-date resources and contact information for DLT programs.

B. *Phone:* 202–720–0413.

C. *Fax:* 202–720–1051.

D. *E-mail: dltinfo@usda.gov*.

E. *Main point of contact:* Orren E. Cameron, III, Director, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture.

Dated: November 30, 2004.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 04–26649 Filed 12–2–04; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: January 2, 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 CONTACT: Sheryl D. Kennerly, (703) 603–7740.

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 services 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 services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products 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 products and services 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 services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Folder, File, Classification,

7530–01–011–9454.
NPA: Georgia Industries for the Blind, Bainbridge, Georgia.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Tape, Pressure Sensitive, 7510–00–266–6707, 7510–00–266–6708, 7510–00–266–6710.
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Services

Service Type/Location: Custodial & Grounds Maintenance, South Eastern Regional Archives, 5780 Jonesboro Road, Morrow, Georgia.
NPA: Goodwill Industries of North Georgia, Inc., Atlanta, Georgia.
Contracting Activity: National Archives & Records Administration, College Park, Maryland.
Service Type/Location: Grounds Maintenance, Basewide-FE Warren AFB, Wyoming.
NPA: Pre-Vocational Training Center, Spokane, Washington.
Contracting Activity: AFSPACOM—Warren AFB.
Service Type/Location: Laundry Service, U.S. Mint, 155 Hermann Street, San Francisco, California.
NPA: Toolworks, Inc., San Francisco, California.
Contracting Activity: U.S. Mint, San Francisco, California.

Deletions

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 products 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 proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Power Duster, 7045–00–NIB–0164, 7045–00–NIB–0165, 7045–00–NIB–0166.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Tape, Electronic Data Processing, 7045–00–377–9235.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contracting Activity: Defense Supply Center Columbus, Columbus, Ohio.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 04–26650 Filed 12–2–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion 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 a service previously furnished by such agencies.

EFFECTIVE DATE: January 2, 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 CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On October 8, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 60351) 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, Building #6107, Camp Bullis, Texas.
NPA: Professional Contract Services, Inc., Austin, Texas.
Contracting Activity: Army Contracting Agency, Fort Sam Houston, Fort Sam Houston, Texas.
Service Type/Location: Document Destruction, NISH, Vienna, Virginia (Prime Contractor).
Performance to be allocated to the Nonprofit Agencies identified at the following locations:

Internal Revenue Service, 675 W. Moana Lane, Reno, Nevada

NPA: Washoe ARC, Reno, Nevada.

Internal Revenue Service, Service Center, Tucson, Arizona

NPA: Beacon Group SW., Inc., Tucson, Arizona.
Contracting Activity: IRS—Western Area Procurement Branch—APFW, San Francisco, CA.

Deletion

On March 26, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 15787) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the service listed below is 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 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 deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Courthouse and Post Office, Tyler, Texas.

NPA: None currently authorized.

Contracting Activity: General Services Administration.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–26652 Filed 12–2–04; 8:45 am]

BILLING CODE 6353–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: This notice announces changes in the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

DATES: Effective December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, Office of General Counsel, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Services (SES) and makes recommendations on performance ratings and awards for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are being drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individuals to the CSB Senior Executive Service Performance Review Board:

PRB Member—Ronald S. Battocchi (General Counsel, National Transportation Safety Board).

PRB Member—Elizabeth S. Woodruff (General Counsel, Federal Retirement Thrift Investment Board).

The above-named members of the CSB PRB replace Dan Campbell (Managing Director, National Transportation Safety Board) and Kathleen O'Brien Ham (Office of Strategic Planning and Policy Analysis, Federal Communications Commission), whose service on the PRB has ended. Their appointments were originally announced in the **Federal Register** of October 8, 2003 (68 FR 58063).

John S. Bresland (CSB Board Member) continues as Chair of the PRB, as announced in the **Federal Register** of October 8, 2003 (68 FR 58063).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: November 29, 2004.

Raymond C. Porfiri,

Deputy General Counsel.

[FR Doc. 04–26654 Filed 12–2–04; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Automotive Replacement Glass Windshields From the People's Republic of China

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

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit, from December 31, 2004, until no later than March 31, 2005, for the preliminary results of the administrative review of the antidumping duty order on automotive replacement glass windshields from the People's Republic of China. This review covers the period April 1, 2003, through March 31, 2004.

EFFECTIVE DATE: December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Jon Freed or Will Dickerson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3818, or 482–1778, respectively.

Background

On May 27, 2004, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of ARG from the PRC for the period April 1, 2003, through March 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 30282 (May 27, 2004). On October 12, 2004, the Department published in the **Federal Register** a notice rescinding the administrative review of two companies which had withdrawn their requests for reviews. *See Notice of Partial Rescission of the Antidumping Duty Administrative Review: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 60612 (October 12, 2004). The preliminary results of review are currently due no later than December 31, 2004.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), states that, if it is not practicable to complete the review within the time specified, the administering authority may extend the 245–day period to issue its preliminary results by up to 120 days. Completion of the preliminary results of this review within the 245–day period is not practicable because the Department needs additional time to analyze a significant amount of information pertaining to each company's sales practices, factors of production, and corporate relationships, and to review responses to supplemental questionnaires.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the preliminary results of review by 90 days until March 31, 2005, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: November 29, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3457 Filed 12–2–02; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

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

ACTION: Notice of rescission of the antidumping duty new shipper review of freshwater crawfish tail meat from the People's Republic of China.

SUMMARY: In response to a request from Qingdao Xiyuan Refrigerate Food Co., Ltd., the Department of Commerce initiated a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. The period of review is September 1, 2002 through August 31, 2003. For the reasons discussed below, we are rescinding this new shipper review.

EFFECTIVE DATE: December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Carrie Blozy, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–1386 and (202) 482–5403, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Background

On October 31, 2003, the Department of Commerce (the Department) initiated a new shipper review of Qingdao Xiyuan Refrigerate Food Co., Ltd. (Qingdao Xiyuan) under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) for the period September 1, 2002 through August 31, 2003. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping New Shipper Reviews*, 68 FR 62774 (November 6, 2003). On August 20, 2004, the Department issued preliminary results based on information provided from questionnaire responses submitted by Qingdao Xiyuan. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review and Rescission of New Shipper Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China*, 69 FR 53669 (September 2, 2004). Verification was scheduled to take place at Qingdao Xiyuan from August 30 through September 1, 2004. On August 28, 2004, counsel for Qingdao Xiyuan verbally informed the Department verifiers that Qingdao Xiyuan would not participate in verification. On September 7, 2004, Qingdao Xiyuan submitted a letter confirming that the company would not participate in verification. On November 12, 2004, the Department informed Qingdao Xiyuan that the Department intended to rescind the new shipper review of Qingdao Xiyuan based on its refusal to allow verification.

Rescission of New Shipper Review

We are rescinding the new shipper review with respect to Qingdao Xiyuan. As noted above, verification was scheduled to take place at Qingdao Xiyuan from August 30 through September 1, 2004. On both August 28, 2004, and September 7, 2004, Qingdao Xiyuan communicated to the Department that it would not allow verification of its questionnaire responses. In a November 12, 2004, letter to Qingdao Xiyuan, we expressed our intent to rescind the new shipper review based on Qingdao Xiyuan's statements that it would not participate in verification. By failing to permit verification, Qingdao Xiyuan did not establish its entitlement to a separate rate. We did not receive any properly filed submissions regarding our intent to rescind. For these reasons, we are rescinding the new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China with respect to Qingdao Xiyuan pursuant to 19 CFR 351.214(a) and 351.214(b)(iii)(B) of the Department's regulations.

Cash Deposits

Bonding is no longer permitted to fulfill security requirements for shipments from Qingdao Xiyuan of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice of rescission of antidumping duty new shipper review in the **Federal Register**. Further, effective upon publication of this notice for all shipments of the subject merchandise exported by Qingdao Xiyuan and entered, or withdrawn from warehouse, for consumption, the cash–deposit rate will be the PRC–wide rate, which is 223.01 percent.

Assessment of Antidumping Duties

The Department shall instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Since we are rescinding this antidumping duty new shipper review, the PRC–wide rate of 223.01 percent in effect at the time of entry applies to all exports of freshwater crawfish tail meat from the PRC produced and exported by Qingdao Xiyuan during the period of review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice of rescission of antidumping duty new shipper review.

Notification to Interested Parties

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(B) of the Tariff Act of 1930, as amended, and 19 CFR 351(f)(3).

Dated: November 24, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3456 Filed 12–2–04; 8:45 am]

[BILLING CODE: 3510–DS–S]

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from Nucor Corporation, International Steel Group Inc. (ISG) and United States Steel Corporation (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands (A–421–807). This administrative review covers imports of subject merchandise from Corus Staal BV (Corus Staal). The period of review is November 1, 2002 through October 31, 2003.

We preliminarily determine that sales of hot-rolled steel from the Netherlands in the United States have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (Customs) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

DATES: *Effective Date:* December 3, 2004.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, Antidumping and Countervailing Duty Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0408 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel flat products from the Netherlands. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,* 66 FR 59565 (November 29, 2001). On November 3, 2003, the Department published the opportunity to request administrative review of, *inter alia*, hot-rolled steel from the Netherlands for the period November 1, 2002 through October 31, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 62279 (November 3, 2003).

In accordance with 19 CFR 351.213(b)(1), on November 26 and 28, 2003,[1] petitioners requested that we conduct an administrative review of sales of the subject merchandise made by Corus Staal. On December 24, 2003, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period November 1, 2002 through October 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 68 FR 74550 (December 24, 2003).

On December 29, 2003, the Department issued its antidumping duty questionnaire to Corus Staal. Corus Staal submitted its response to sections A B, C, D, and E of the questionnaire on February 18, 2004.

On January 23, 2004, petitioner, United States Steel Corporation, requested the Department determine whether antidumping duties have been absorbed during the period of review by the respondent Corus Staal. On February 19, 2004, the Department issued a letter inviting Corus Staal to submit on the record evidence that unaffiliated purchasers will pay the antidumping duties that may be assessed on entries during the period of review. On March 5, 2004, Corus Staal submitted its response to the Department's letter.

On February 18, 2004, Corus Staal requested the Department to excuse certain affiliates, Corus Service Center Maastricht (Feijen), Corus Vlietjonge BV, Ijzerleeuw BV and Geertsema Staal BV, from reporting home market sales. On April 2, 2004, the Department responded affirmatively to the request not to report downstream home market sales by these four companies.

On March 18, 2004, the Department issued a supplemental section A questionnaire, to which Corus Staal responded on April 1, 2004. On April 2, 2004, the Department issued a supplemental section B and C questionnaire. Corus Staal submitted its supplemental section B and C response on April 21, 2004. On May 4, 2004, the Department issued a second section A supplemental questionnaire, to which Corus Staal responded on May 13, 2004. On May 18, 2004, the Department issued a verification agenda for a verification visit to Corus Steel USA Inc.'s (CSUSA) offices in Schaumberg, Illinois USA. On May 24, 2004, the Department issued a section D and E supplemental questionnaire, to which Corus Staal filed a response on June 21, 2004. On May 26, 2004, Corus Staal filed quantity and value reconciliations as requested in section A of the questionnaire.

On May 27, 2004, petitioners filed comments concerning the verification of CSUSA, which was conducted in Schaumburg, Illinois from June 2 to June 3, 2004. The verification report was issued on July 13, 2004. On June 10, 2004, the Department issued a second supplemental section C questionnaire, to which Corus Staal filed a response on June 24, 2004. On July 6, 2004, United States Steel Corporation filed comments concerning the preliminary results, to which Corus Staal responded on July 16, 2004.

Because it was not practicable to complete this review within the normal time frame, on July 15, 2004, we published in the **Federal Register** our notice of extension of time limit for this review. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit*, July 15, 2004 (69 FR 42418–42419). This extension established the deadline for these preliminary results as November 29, 2004.

Period of Review

The POR is November 1, 2002, through October 31, 2003.

Scope of the Review

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 millimeters (mm) and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without

[1] Nucor and (ISG) filed their requests for administrative reviews on November 26, 2003, while United States Steel Corporation filed its request for review on November 28, 2003.

patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review. Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order.

Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).

Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.

Ball bearings steels, as defined in the HTS.

Tool steels, as defined in the HTS.

Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

ASTM specifications A710 and A736.

USS Abrasion-resistant steels (USS AR 400, USS AR 500).

All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this order, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Verification

The Department verified the information reported by Corus Staal for CSUSA's offices in Schaumberg, Illinois from June 2 through June 3, 2004. The results of this verification are found in the verification report dated July 13, 2004, on file in the Central Records Unit of the Department in room B–099 of the main Commerce building.

Affiliated-Party Sales Issues

During the period of review (POR), Corus Staal sold the foreign like product to several affiliated resellers in the home market. These include Namascor BV (Namascor), a service center wholly owned by Corus Staal, and Laura Metaal BV (Laura), a manufacturer and service center in which Corus Staal's parent company, Corus Nederland BV, has a shareholder interest. For purposes of our analysis, we used Namascor's and Laura's sales to unaffiliated customers, and, where Laura consumed the subject merchandise purchased from Corus Staal in its manufacturing operations, we used Corus Staal's sales to Laura. In addition, Corus Staal sold the foreign like product to Feijen Service Center (Feijen), a business unit of Corus Service Center Maastricht, Corus Vlietjonge BV (Vlietjonge),[2] also a service center, Ijzerleeuw BV (Ijzerleeuw) and Geertsema Staal BV (Geerstema Staal). Both Feijen and Vlietjonge are affiliated with Corus Staal through the former British Steel companies, whose parent, British Steel PLC, merged with Koninklijke Hoogovens NV (now Corus Nederland BV) in October 1999 to form the Corus Group PLC. Vlietjonge has a financial interest in Ijzerleeuw and Geerstema Staal, but has no management or operational control over either company. In a letter dated February 18, 2004, Corus Staal requested an exemption from reporting downstream sales by Feijen, Vlietjonge, Ijzerleeuw and Geerstema Staal because of the nature and quantity of the products sold. On April 2, 2004, the Department excused Corus Staal from reporting downstream sales by Feijen, Vlietjonge, Ijzerleeuw and Geerstema Staal because of the reasons set out in the Department's letter to Corus Staal, dated April 2, 2004. *See* Letter from Robert James to Corus Staal dated April 2, 2004. Therefore, we have used Corus Staal's sales to Feijen, Vlietjonge, Ijzerleeuw and Geerstema Staal to perform our analysis.

In the U.S. market, Corus Staal sold subject merchandise to Thomas Steel, a further manufacturer of battery-quality hot band steel. Thomas Steel is wholly owned by Corus USA Inc., which in turn is wholly owned by Corus Staal's parent company, Corus Nederland BV. Claiming the value-added in the United States by Thomas Steel exceeded substantially the value of the subject merchandise as imported, Corus Staal utilized the ''simplified reporting'' option for the merchandise further processed by Thomas Steel. Pursuant to section 772(e) of the Tariff Act, of 1930, as amended (the Act), when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is

[2] Namascor also resold some of the foreign like product to Vlietjonge.

likely to exceed substantially the value of the subject merchandise, we will determine the CEP for such merchandise using the price of identical or other subject merchandise, if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP. *See, e.g., Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 67 FR 57379, 57381 (September 10, 2002) (unchanged for final results, 68 FR 1816 (January 14, 2003)). Consistent with the Department's regulations, we have determined for these preliminary results that the estimated value added in the United States by Thomas Steel accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States, and therefore, the value added is likely to exceed substantially the value of the subject merchandise. We have also preliminarily determined there is a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that we have no reason to believe another methodology would be appropriate. *See* the memorandum from David Cordell and Robert James to Richard Weible, ''Simplified Reporting'' and Value Added in the United States by Thomas Steel,'' dated July 28, 2004.

Duty Absorption

On January 23, 2004, the petitioner, United States Steel Corporation, requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondent. Section 751(a)(4) of the Act provides for the Department, if requested, to determine, during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because Corus Staal BV sold to unaffiliated customers in the United States through itself as the importer of record, because it sold to affiliated service centers in the United States, and because this review was initiated two years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

In determining whether the antidumping duties have been absorbed by the respondent during the POR, we presume the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. On February 19, 2004, the Department requested evidence from the respondent to demonstrate that its U.S. purchasers will pay any antidumping duties ultimately assessed on entries during the POR. In its response, submitted on March 5, 2004, Corus Staal stated a number of points which are summarized in the Duty Absorption background section of the Analysis Memorandum accompanying this **Federal Register** notice. Corus Staal argues it has presented evidence that shows Corus Staal ''has negotiated terms with its customers to permit Corus to set its prices at levels to avoid dumping.''

Although Corus Staal claims that it has negotiated terms with its customers to permit Corus Staal to set its prices at levels to avoid dumping, it concedes ''these provisions do not allow for the retroactive collection of any additional antidumping duties ultimately assessed on the subject merchandise.'' (*See* Corus Staal's response dated March 5, 2004 at page 5.) Furthermore, Corus Staal failed to provide an agreement between Corus Staal and its unaffiliated purchaser stating the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Therefore, we preliminarily find that antidumping duties have been absorbed by Corus Staal on all U.S. sales made through its importer of record, namely Corus Staal.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from the Netherlands to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to monthly weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the descriptions in the ''Scope of the Review'' section of this notice, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of hot-rolled steel from the Netherlands.

We have relied on the following 11 criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: Whether painted or not, quality, carbon content level, yield strength, thickness, width, whether coil or cut-to-length sheet, whether temper rolled or not, whether pickled or not, whether mill or trimmed edge, and whether the steel is rolled with or without patterns in relief.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's December 29, 2003 questionnaire.

Export Price and Constructed Export Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).'' Section 772(b) of the Tariff Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).''

In the instant review, Corus Staal sold subject merchandise through two affiliated steel service centers which further manufacture flat-rolled steel products: Rafferty-Brown Steel Co., Inc. of Connecticut (RBC) and Rafferty-Brown Steel Co. of North Carolina (RBN). Corus Staal reported each of these transactions as CEP transactions, and the remainder of its U.S. sales of subject merchandise as EP transactions.

However, after reviewing the evidence on the record of this review, we have preliminarily determined that certain of Corus Staal's reported EP transactions are properly classified as CEP sales because these sales occurred after importation. This determination is consistent with section 772(b) of the Act.

During the POR, Corus Staal executed all agreements with U.S. customers and amendments related to those agreements in the Netherlands. *See* Corus Staal's

February 18, 2004 questionnaire response (February 18, 2004 QR) at 2, footnote 13. In addition, Corus Staal also served as the importer of record for subject merchandise entered during the POR.

However, in the case of ''just in time'' (JIT) sales to one unaffiliated customer, the invoice was issued after the goods had entered the United States. As the invoice date has been found to be the date of sale in this review and the first review of this order, the JIT sales fail to meet the criteria for EP sales which arise where the ''the first sale to an unaffiliated person occurs before the goods are imported into the United States.'' *See* the Department's December 29, 2003, Questionnaire at I–7.

In its response to the Department's second supplemental section C questionnaire, dated June 10, 2004, Corus Staal argues the definition provided in the questionnaire is a short hand definition whereas the statutory language defines EP sales as those where the goods are ''first sold (or agreed to be sold) before the date of importation.'' (Section 772 (a) of the Act). See June 24, 2004 second supplemental section C questionnaire response (Second SQR) at 4(b). Corus Staal argues the relevant frame agreement between Corus Staal and its customer was signed prior to importation by Corus Staal in the Netherlands, and therefore, the transactions meet the test for EP status articulated by the Federal Circuit in its decision in AK Steel. *AK Steel,* 226 F.3d 1361 (Fed. Cir. 2000).

Petitioner, United States Steel Corporation (USS), argues in comments based on the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea (Stainless Steel Bar from Korea)* 67 FR 3,149 (January 23, 2002) and the accompanying Issues and Decisions Memorandum at Comment 5 that ''a 'frame agreement' is irrelevant to the EP/CEP analysis'' and that ''for purposes of the EP/CEP analysis, therefore, it is the Department's practice to look solely at the date that the material terms of sale become established *i.e.*, the date of sale, (in the instant case, the invoice date), rather than the date of any prior 'frame agreement.' '' *See* July 6, 2004 Comment on behalf of USS at 3.

Corus Staal responds to petitioner's comments and argues the fact pattern in the *Stainless Steel Bar from Korea* case was different from the present case. Corus Staal claims no sales agreements were executed after importation, with the only sales document being the frame agreement, which was signed by Corus Staal in the Netherlands before importation. *See* Corus Staal's July16, 2004 response at Comment 3.

Corus Staal states in the investigation Corus Staal had argued that ''the invoice should be controlling, as no material terms were established in the initial sales agreements, the frame agreements.'' It states that the Department, over Corus Staal's objections, agreed with petitioners in determining ''although Corus Staal initially reaches the agreement with the U.S. customer on the estimated overall volume and pricing of the merchandise, CSUSA provides the final written conformation of the agreement, setting forth the agreed prices and quantities to the U.S. customer.'' Corus Staal argues that because of this, the Department decided to treat the reported EP sales as CEP. *See* Corus Staal's July 16, 2004 response at Comment 3. Corus Staal claims the ''frame agreement, and not the invoice, was controlling on this issue'' and is still therefore the law of the case. *See id.* at 4.

Corus Staal further argues that in *Stainless Steel Bar from Korea,* the Department looked at the ''totality of circumstances involving the sales process'' and in this situation, the facts of this case ''support a finding that the JIT sales should be treated as EP transactions,'' as the frame agreement is executed in the Netherlands, the frame agreement is entered into before importation and Corus Staal retains title to the merchandise until it passes to the customer. *See id.* at 5.

Corus Staal contends the *AK Steel* case is not relevant as it did not address ''how the statutory phrase 'first sold (or agreed to be sold) before the date of importation' should be interpreted.'' *See id.* at 5. Corus Staal maintains the fact pattern was different in that *AK Steel* did not involve ''transactions between a producer/exporter in the exporting country with an unaffiliated U.S. customer.'' *See id.* at 6.

Corus Staal also claims that because the transactions took place outside the United States, the Federal Circuit made clear that the ''locus of the parties at the time of transaction does matter'' and it is ''unreasonable to suggest that the Federal Circuit intended to prohibit ex quay or delivered transactions made directly by a foreign producer from being treated as EP sales.'' At *id.* 8.

Corus Staal argues the frame agreement is controlling in this case based upon the Department's position in the investigation. However, in this review Corus Staal has maintained the invoice date ''better reflects the time that the material terms of sale become fixed.'' *See* Corus Staal's April 1, 2004 SQR at 16. Corus Staal further argues that ''price and other changes up to the time of shipment (and sometimes later) are not infrequent'' and the use of ''invoice date most accurately reflects commercial reality as to the time that the sale took place and at which the material terms of sale become final and fixed.'' *Id.* at 16. This is confirmed in its April 21, 2004 response, in which Corus Staal states ''until the time of invoicing/shipment, Corus Staal and/or the customer can change the quantity, price and/or the specific product to be shipped.''

In Corus Staal's own words, the invoice date is the date used to determine the date of sale as changes often do occur between the frame agreement and the date of invoice. If this is the case, it is hard to argue that the frame agreement is the governing document in determining when a sale is agreed upon or when it is executed. Accordingly, if the Department accepts in this review the date of invoice as the date of sale, it should also accept such reasoning in determining the relevant date for the EP/CEP analysis. The statue clearly defines EP sales as those where the goods are ''first sold (or agreed to be sold) before the date of importation'' and as the date of invoice is the governing date, it is clear that in the case of the JIT sales, the sales do not meet the criterion of having being sold before importation. As Corus Staal itself acknowledges, the *AK Steel* case did not address ''how the statutory phrase 'first sold (or agreed to be sold) before the date of importation' should be interpreted'' or what should happen in cases where there are ''transactions between a producer/exporter in the exporting country with an unaffiliated U.S. customer.'' *See* Corus Staal's July 16, 2004 response at Comments 5 and 6.

As such, the Department has preliminarily determined the sales classified as JIT sales should be reclassified as CEP sales for the purposes of this review. It is clear that based upon invoice date as the date of sale, such invoicing is taking place after importation, and therefore, the sales do not meet the criteria for EP sales as any sale or agreement to sell is not set until the invoice is actually issued. Furthermore, the goods are physically in the United States when the invoice is issued. The Department determines such sales are CEP because section 772 (b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a

purchaser not affiliated with the producer or exporter.'' EP sales are clearly defined as taking place ''before the date of importation'' whereas CEP sales are defined as taking place ''before or after the date of importation'' and do not preclude sales from the producer to the unaffiliated purchaser.

With respect to the remainder of Corus Staal's reported EP sales (*i.e.*, those sales to unaffiliated U.S. customers made between November 1, 2002 and October 31, 2003), we have continued to classify these as EP transactions because the contracts governing these sales were signed by Corus Staal in the Netherlands, and because such sales were invoiced before importation.

For those sales which we are classifying as EP transactions, we calculated the price of Corus Staal's EP sales in accordance with section 772(a) of the Act. We based EP on the packed, delivered, duty paid prices for export to end users and service centers in the U.S. market. We adjusted gross unit price for billing errors, freight revenue, certain minor processing expenses, tolling expenses and early payment discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, U.S. brokerage expenses, and U.S. warehousing expenses.

For those transactions categorized as CEP sales, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed, delivered, duty paid prices to unaffiliated purchasers in the United States. Where applicable, we made adjustments to gross unit price for billing errors, freight revenue, certain minor processing expenses, and early payment discounts. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, U.S. brokerage expenses, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit, warranty, etc.), inventory carrying costs, and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Finally, with respect to subject merchandise to which value was added in the United States by RBC and RBN prior to sale to unaffiliated customers, we deducted the cost of further manufacture in accordance with section 772(d)(2) of the Act.

Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed pursuant to an investigation under section 201 of the Trade Act of 1974, as amended (section 201 duties). As previously determined in the prior review, the Department will not deduct section 201 duties from U.S. prices in calculating dumping margins because 201 duties are not ''United States import duties'' within the meaning of the statute, and to make such a deduction effectively would collect the 201 duties a second time. Our examination of the safeguards and antidumping statutes and their legislative histories indicates Congress plainly considered the two remedies to be complementary and, to some extent, interchangeable. Accordingly, to the extent that section 201 duties may reduce dumping margins, this is not a distortion of any margin to be eliminated, but a legitimate reduction in the level of dumping. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands Final Results of Antidumping Duty Administrative Review* 69 FR 33630 (June 16, 2004) and accompanying Unpublished Decision Memorandum at Comment 3.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP/CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP/CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (*i.e.*, the CEP offset provision).

In implementing these principles in the instant review, we obtained information from Corus Staal about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Corus Staal and the level to which each selling activity was performed for each channel of distribution. In identifying LOTs for U.S. CEP sales, we considered the selling functions reflected in the starting price after any adjustments under section 772(d) of the Act.

In the home market, Corus Staal reported two channels of distribution (sales by Corus Staal and sales through its affiliated service centers Namascor and Laura) and three customer categories (end users, steel service centers, and trading companies). *See, e.g.*, Corus Staal's February 18, 2004 QR at A–19. For both channels of distribution in the home market, Corus Staal performed similar selling functions, including strategic and economic planning, advertising, freight and delivery arrangements, technical/warranty services, and sales logistics support. The remaining selling activities performed did not differ significantly by channel of distribution, with the exception of market research and research and development activities, which were performed only by Corus Staal. *See* Corus Staal's February 18, 2004 QR at Exhibit A–8 and pages A–19 through A–42. One LOT exists for Corus Staal's home market sales because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each channel are sufficiently similar.

In the U.S. market, Corus Staal reported two channels of distribution for its sales of subject merchandise during the POR: EP sales made directly to unaffiliated U.S. customers and CEP sales made through its affiliated service centers, RBC and RBN. For sales classified as EP, Corus Staal reported two customer categories, end users and steel service centers. *See, e.g.*, Corus Staal's February 18, 2004 QR at A–21 and A–22. However, as explained in the

''Export Price and Constructed Export Price'' section of this notice, we have preliminarily determined that certain of Corus Staal's reported EP transactions (*i.e.*, sales where invoicing took place after date of entry) are properly classified as CEP sales.

With regard to CEP sales made through RBC and RBN, Corus Staal claims ''the home market and U.S. sales made by the affiliated steel service centers do constitute a different LOT from the EP and direct home market sales made by CSBV.'' *See id.* at 22. Corus Staal however, goes on to say ''it is not claiming a LOT (or CEP offset) in this review''as ''the Department had found a single level of trade for all of Corus's sales in prior determinations.'' *See id.* at 23.

As noted above, we determine the U.S. LOT on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Act. In analyzing whether a CEP offset is warranted, we reviewed information provided in section A of Corus Staal's questionnaire response regarding selling activities performed and services offered in the U.S. and foreign markets. We found there to be few differences in the selling functions performed by Corus Staal on its sales to affiliated service centers in the United States and those performed on its sales to home market customers. For example, Corus Staal provided similar freight and delivery services, technical/warranty assistance, and sales logistics support on its sales to home market customers and on its sales to RBC and RBN. *See*, *e.g.*, Corus Staal's February 18, 2004 QR at pages A–19 through A–60. Therefore, the Department has preliminarily determined the record does not support a finding that Corus Staal's home market sales are at a different, more advanced LOT than its CEP sales to RBC and RBN. Accordingly, no CEP offset adjustment to NV is warranted for Corus Staal's reported CEP sales.

As to Corus Staal's sales to unaffiliated customers in the United States, which we have reclassified as CEP transactions, we considered whether a LOT adjustment may be appropriate. As noted above, we have preliminarily determined that one LOT exists in the home market, and therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Thus, we examined whether Corus Staal's home market sales were at a different, more advanced LOT than its sales to U.S. unaffiliated customers to determine whether a CEP offset was necessary. Comparing the selling activities performed and services offered by Corus Staal on its sales to unaffiliated customers in the United States to those activities performed on its home market sales, we found there to be few differences in the selling functions performed by Corus Staal on its sales to unaffiliated customers in the United States and those performed for sales in the home market. For example, on sales to both home market customers and to unaffiliated U.S. customers, Corus Staal provided similar strategic and economic planning, freight and delivery services, technical/warranty assistance, research and development, and sales logistics support. *See*, *e.g.*, Corus Staal's February 18, 2004 QR at pages A–19 through A–60. As a result, we preliminarily find that there is not a significant difference in selling functions performed in the U.S. and foreign markets on these sales. Thus, we find that Corus Staal's home market sales and sales to unaffiliated customers in the United States were made at the same LOT; accordingly, no CEP offset adjustment is warranted.

Finally, for those sales which we are continuing to classify as EP, we considered whether a LOT adjustment is warranted. Again, comparing the selling activities performed and services offered by Corus Staal on its sales to unaffiliated customers in the United States to those activities performed on its home market sales, we found there to be few differences in the selling functions performed by Corus Staal. Thus, we find that Corus Staal's home market sales and sales to unaffiliated customers in the United States were made at the same LOT, and therefore, no LOT adjustment is necessary.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See*, *e.g.*, Corus Staal's February 18, 2004 QR at Attachment A–2.

B. Affiliated Party Transactions and Arm's-Length Test

Corus Staal reported that it made sales in the home market to affiliated resellers and end-users. Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102(b). Prior to performing the arm's-length test, we aggregated multiple customer codes reported for individual affiliates in order to treat them as single entities. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002) (*Modification to Affiliated Party Sales*). To test whether the sales to affiliates were made at arm's length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, discounts and rebates, movement charges, and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Modification to Affiliated Party Sales* at 69187–88. In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the most recently completed segment of the proceeding at the time of initiation, *i.e.*, the investigation of hot-rolled steel from the Netherlands (*see Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001), as amended, *Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 55637 (November 2, 2001)), we have reasonable grounds to believe or suspect that Corus Staal made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Corus Staal.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for each model based on the sum of Corus Staal's material and

fabrication costs for the foreign like product, plus amounts for SG&A and packing costs. The Department relied on the COP data reported by Corus Staal, except as noted below:

—We excluded interest income from RBC's general and administrative (G&A) expense rate calculation.

—We recalculated RBN's G&A expense rate based on RBN's fiscal year 2003 financial statements.

For further details regarding these adjustments, *see* the Department's ''Cost of Production, Constructed Value and Further Manufacturing Cost Calculation Adjustments for the Preliminary Results—Corus Staal BV'' (COP Analysis Memorandum), dated November 29, 2004.

Corus Staal reported separate COP databases, one of which distinguished between identical control numbers (CONNUMS) produced in both its conventional hot-rolling mill and direct sheet plant. For purposes of our analysis, however, we are not distinguishing between products produced at the two facilities because the type of facility used to produce the subject merchandise is not one of the criteria used to match U.S. sales of subject merchandise to sales of the foreign like product. For a list of the product characteristics considered in our analysis, *see* the section ''Product Comparisons'' above. Thus, we used the COP database that did not distinguish between the two production methods. We compared the weighted-average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to home market prices net of billing adjustments, freight revenue, certain minor processing expenses, discounts and rebates, and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: whether, within an extended period of time, such sales were made in substantial quantities; and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Corus Staal revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the Corus Staal's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV and weight-averaged the CVs reported for identical products produced in both the conventional hot-rolling mill and direct sheet plant as described above in the ''Cost of Production Analysis'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. We adjusted gross unit price for billing adjustments, discounts, rebates, freight revenue, tolling revenue, and certain minor processing expenses, where appropriate. We made deductions, where appropriate, for freight, foreign inland freight and warehousing, brokerage, and marine insurance pursuant to section 773(a)(6)(B) of the Act, as well as for early payment discounts and rebates. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, difmer) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses (offset by interest revenue), warranty expenses, and credit insurance. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses. However, in this review, we have preliminarily determined that all U.S. sales match, and therefore, have not based NV on CV.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period November 1, 2002, through October 31, 2003, to be as follows:

Manufacturer/exporter	Margin (percent)
Corus Staal BV (Corus Staal) ..	4.61

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal

briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. See CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 2.59 percent, the ''all others'' rate established in the LTFV investigation. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 67 FR 59565 (November 29, 2001).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3459 Filed 12–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–895]

Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Crepe Paper From the People's Republic of China

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

DATES: *Effective Date:* December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva at (202) 482–3208 or Hallie Noel Zink at (202) 482–6907; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on September 21, 2004. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products and Certain Crepe Paper Products From The People's Republic of China*, 69 FR 56407 (September 21, 2004) (''*Preliminary Determination*''). Since the publication of the *Preliminary Determination*, the following events have occurred.

On October 21, 2004 Fujian Xinjifu Enterprises Co. Ltd. (''Fujian Xinjifu'') submitted to the Department a letter confirming their decision not to participate in the verification of its Section A response in the above-referenced investigation.

On October 26, 2004 the Department notified all interested parties that briefs for the final determination in this investigation were due on November 1, 2004 and that rebuttal briefs were to be submitted by November 8, 2004. The Department did not receive either briefs or rebuttal briefs from any interested parties. *See Preliminary Determination* for a history of all previous comments submitted in this case.

Scope of Investigation

Crepe paper products subject to this investigation have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye-colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame-retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this investigation may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this investigation does not have specific classification numbers assigned to it under the Harmonized Tariff System of the United States (''HTSUS''). Subject merchandise may be under one or more of several different HTSUS subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

Period of Investigation (''POI'')

The POI is July 1, 2003, through December 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (February 17, 2004). *See* 19 CFR 351.204(b)(1).

Facts Available

In the *Preliminary Determination*, we based the dumping margin for the mandatory respondents, Fuzhou Light Industry Import and Export Co., Ltd (''Fuzhou Light'') and Fuzhou Magicpro Gifts Co., Ltd. (''Magicpro''), on adverse

facts available pursuant to sections 776(a)(2) and (b) of the Tariff Act of 1930, as amended (''the Act''). *See Preliminary Determination*, 69 FR at 56412. The use of adverse facts available was warranted in this investigation because both Fuzhou Light and Magicpro informed the Department that they no longer wished to participate in this investigation. *Id.* Fuzhou Light and Magicpro's withdrawal resulted in the failure to provide information by the deadline or in the form or manner requested and, therefore, the Department used facts otherwise available pursuant to section 776(a)(2) of the Act in reaching the applicable determination. Furthermore, Fuzhou Light's and Magicpro's withdrawals constituted failures to cooperate to the best of their ability in the investigation and, therefore, the Department applied an adverse inference pursuant to section 776(b) of the Act in selecting from the facts available. As adverse facts available, we assigned Fuzhou Light and Magicpro the People's Republic of China (''PRC'')-wide rate. *Id.* A complete explanation of the selection, corroboration, and application of adverse facts available can be found in the *Preliminary Determination. See Preliminary Determination*, 69 FR at 56412–56414. Since the publication of the *Preliminary Determination*, no interested parties have commented on our application of adverse facts available to the mandatory respondents with respect to the *Preliminary Determination.* Accordingly, for the final determination, we continue to use the margin listed in the *Preliminary Determination,* for the reasons stated therein. The ''PRC-wide'' rate remains unchanged as well.

The Department explained in the *Preliminary Determination* that there were no other estimated margins available for the Section A respondents, apart from the single price-to-normal value dumping margin in the petition. Therefore, we applied the petition margin of 266.83 percent as the rate for the crepe paper Section A respondents. *See Preliminary Determination*, 69 FR at 56414. No interested parties commented on our application of the petition margin to the crepe paper Section A respondents. As a result, we continue to use the margin listed in the *Preliminary Determination*, for the reasons stated therein.

As noted above, Fujian Xinjifu did not participate in the verification of its Section A response. As a result, Fujian Xinjifu has not overcome the presumption that it is part of the PRC-wide entity and, therefore, will be subject to the PRC-wide rate. *See Memorandum to the File*, dated October 22, 2004. The Department did not verify the responses of the other Section A respondents, Everlasting Business and Industry Co. Ltd., Fujian Nanping Investment and Enterprise Co., Ltd., and Ningbo Spring Stationary Co., Ltd. Nevertheless, the Department continues to grant a separate rate to each of these Section A respondents because determining otherwise would hold them accountable for the Department's inability to verify them. Specifically, the Department intended to verify the three largest respondents, by volume, in this investigation, Fuzhou Light and Magicpro, the mandatory respondents, and Fujian Xinjifu, the largest Section A respondent. As stated above, the mandatory respondents withdrew their participation in the investigation, and Fujian Xinjifu declined to participate in verification. Fujian Xinjifu's letter declining participation in verification came shortly before verification was scheduled to begin, which prevented the Department from scheduling verification of any of the three remaining Section A respondents. In light of these circumstances, and the fact that no information has been presented to cast doubt on the veracity of the responses of the Section A respondents, the Department determines that the three remaining Section A respondents continue to be entitled to separate rates. As stated above, the separate rate for each of the Section A respondents remains equal to the petition margin of 266.83 percent, as in the *Preliminary Determination.*

Critical Circumstances

On June 18, 2004 Seaman Paper Company of Massachusetts, Inc.; American Crepe Corporation; Eagle Tissue LLC; Garlock Printing and Converting, Inc.; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL–CIO, CLC (''Petitioners'') submitted an allegation of critical circumstances with respect to the antidumping duty investigation of certain crepe paper from the PRC. On September 21, 2004, the Department issued its *Preliminary Determination* that it had reason to believe or suspect critical circumstances exist with respect to imports of certain crepe paper from the PRC. *See Preliminary Determination*, 69 FR at 56409 and 56417–56418. The Department did not receive any briefs or rebuttal briefs from interested parties. Therefore, for the reasons set forth in the *Preliminary Determination*, we continue to find that critical circumstances exist for all imports of certain crepe paper from the PRC including imports from the mandatory respondents, the Section A respondents and the PRC-wide entity.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of crepe paper from the PRC that are entered, or withdrawn from warehouse, for consumption on or after 90 days before the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

We determine that the following dumping margins exist for the POI:

Manufacturer/exporter	Margin (percent)
Fuzhou Light	266.83
Magicpro	266.83
Everlasting Business and Industry Co. Ltd	266.83
Fujian Nanping Investment and Enterprise Co., Ltd	266.83
Ningbo Spring Stationary Co., Ltd	266.83
PRC-Wide Rate	266.83

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from the PRC are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to Administrative Protective Order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of

APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3458 Filed 12–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application No. 04–00003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Rocky Mountain Instrument Company (''RMI''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR 325 (2004).

Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

I. Export Trade

Products

Laser and imaging optical components, coatings, assemblies, electro-optical systems, and laser marking systems.

II. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Export Trade Activities and Methods of Operation

With respect to the export of its products, RMI may:

1. Enter into arrangements with foreign distributors or customers to:

(a) Establish exclusive relationships; and

(b) Establish specific territorial sales restrictions.

2. Enter into agreements with primary customers to allow RMI to sell custom-built products to third-party customers.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: November 29, 2004.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. 04–26593 Filed 12–2–04; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Request for an Extraordinary Challenge Committee

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Request for an Extraordinary Challenge Committee to review the binational NAFTA Panel decisions of September 5, 2003; April 19, 2004; and August 31, 2004 in the matter of Certain Softwood Lumber Products from Canada—Final Affirmative Threat of Material Injury Determination, Secretariat File No. USA/CDA–2002–1904–07.

SUMMARY: On November 24, 2004, the Office of the United States Trade Representative filed a Request for an Extraordinary Challenge Committee to review decisions as stated above with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Committee review was requested of the final affirmative threat of material injury made by the International Trade Commission, respecting Certain Softwood Lumber Products From Canada. These determinations were published in the **Federal Register**. The NAFTA Secretariat has assigned Case Number ECC–2004–1904–01USA to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A Request for an Extraordinary Challenge Committee was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 24, 2004, requesting panel review of the final affirmative threat of material injury as described above.

The Rules provide that:

(a) A Party or participant in the panel review who proposes to participate in the extraordinary challenge proceeding shall file with the responsible Secretariat a Notice of Appearance within 10 days after the filing of the first Request for Extraordinary Challenge Committee (the deadline for filing a Notice of Appearance is December 6, 2004); and

(b) All briefs shall be filed within 21 days after the Request for Extraordinary Challenge Committee (the deadline for filing briefs is December 15, 2004);

Dated: November 29, 2004.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 04–26584 Filed 12–2–04; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board [Formerly the Computer System Security and Privacy Advisory Board]

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Tuesday, December 14, 2004, from 8:30 a.m. until 5 p.m. and Wednesday, December 15, 2004, from 8:30 a.m. until 5 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/ispab/.*

DATES: The meeting will be held on December 14, 2004, from 8:30 a.m. until 5 p.m. and December 15, 2004, from 8:30 a.m. until 5 p.m.

ADDRESSES: The meeting will take place at the Bethesda Hyatt Regency Hotel, 7400 Wisconsin Avenue (One Bethesda Metro Center), Bethesda, MD 20814.

AGENDA

—Welcome and Overview
—ISPAB Work Plan Status Review
—Department of Homeland Security Privacy Initiatives Briefing
—US–VISIT Privacy Program Briefing
—Update on the National Information Assurance Partnership Program
—Introduction of New Director of NIST Information Technology Laboratory
—Professional Credentialing Strategy
—Agenda Development for March 2005 ISPAB Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than December 8, 2005. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: November 24, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–26634 Filed 12–2–04; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101204A]

Small Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Seismic Survey in the Southwest Pacific Ocean

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Scripps Institution of Oceanography, (Scripps), a part of the University of California, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys in the southwestern Pacific Ocean (SWPO). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to Scripps to incidentally take, by harassment, small numbers of several species of cetaceans for a limited period of time within the next year.

DATES: Comments and information must be received no later than January 3, 2005.

ADDRESSES: Comments on the application should be addressed 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. The mailbox address for providing email comments is *PR1.101204A@noaa.gov*. Please include in the subject line of the e-mail comment the following document identifier: 101204A. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2322, ext 128.

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 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, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and 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 takings 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.''

Section 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 with respect to certain 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 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 October 6, 2004, NMFS received an application from Scripps for the taking, by harassment, of several species of marine mammals incidental to conducting a low-energy marine seismic survey program during early 2005 in the SWPO. The overall area within which the seismic survey will occur is located between approximately 25° and 50°S, and between approximately 133° and 162.5°W. The survey will be conducted entirely in international waters. The purpose of the seismic survey is to collect the site survey data for a second Integrated Ocean Drilling Program (IODP) transect, to study the structure of the Eocene Pacific from the subtropics into the Southern Ocean. A future ocean-drilling program cruise (not currently scheduled) based on the data collected in the present program will better document and constrain the actual patterns of atmospheric and oceanic circulation on Earth at the time of extreme warmth in the early Eocene. Through the later ocean drilling program, it is anticipated that marine scientists will be able to (1) define the poleward extent of the sub-tropical gyre, (2) establish the position of the polar front, (3) determine sea-surface temperatures and latitudinal temperature gradient, (4) determine the width and intensity of the high-productivity zone associated with these oceanographic features, (5) characterize the water masses formed in the sub-polar region, (6) determine the nature of the zonal winds and how they relate to oceanic surface circulation, and (7) document the changes in these systems as climate evolves from the warm early Eocene to the cold Antarctic of the early Oligocene. As presently scheduled, the seismic survey will occur from approximately February 11, 2005 to March 21, 2005.

Description of the Activity

The seismic survey will involve one vessel. The source vessel, the *R/V Melville*, will deploy a pair of low-energy Generator-Injector (GI) airguns as an energy source (each with a discharge volume of 45 in^3), plus a 450–meter (m) (1476–ft) long, 48–channel, towed hydrophone streamer. As the airguns are towed along the survey lines, the receiving system will receive the returning acoustic signals. The survey program will consist of approximately 11,000 kilometer (km) (5940 nautical mile (nm)) of surveys, including turns. Water depths within the seismic survey area are 4000–5000 m (13,123–16,400 ft) with no strong topographic features. The GI guns will be operated en route between piston-coring sites, where bottom sediment cores will be collected. There will be additional operations associated with equipment testing, start-up, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The energy to the airguns is compressed air supplied by compressors on board the source vessel. Seismic pulses will be emitted at intervals of 6–10 seconds. At a speed of 7 knots (13 km/h), the 6–10 s spacing corresponds to a shot interval of approximately 21.5–36 m (71–118 ft).

The generator chamber of each GI gun, the one responsible for introducing the sound pulse into the ocean, is 45 in^3. The larger (105 in^3) injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The two 45/105 in^3 GI guns will be towed 8 m (26.2 ft) apart side by side, 21 m (68.9 ft) behind the *Melville*, at a depth of 2 m (6.6 ft).

General-Injector Airguns

Two GI-airguns will be used from the *Melville* during the proposed program. These 2 GI-airguns have a zero to peak (peak) source output of 237 dB re 1 microPascal-m (7.2 bar-m) and a peak-to-peak (pk-pk) level of 243 dB (14.0 bar-m). However, these downward-directed source levels do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined airguns in the airgun array. The actual received level at any location in the water near the airguns will not exceed the source level of the strongest individual source and actual levels experienced by any organism more than 1 m (3.3 ft) from any GI gun will be significantly lower.

Further, the root mean square (rms) received levels that are used as impact criteria for marine mammals (see Richardson *et al.*, 1995) are not directly comparable to these peak or pk-pk values that are normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. For example, a measured received level of 160 dB rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a pk-pk measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.* 1998, 2000). The precise difference between rms and peak or pk-pk values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for an airgun-type source.

The depth at which the sources are towed has a major impact on the maximum near-field output, because the energy output is constrained by ambient pressure. The normal tow depth of the sources to be used in this project is 2.0 m (6.6 ft), where the ambient pressure is approximately 3 decibars. This also limits output, as the 3 decibars of confining pressure cannot fully constrain the source output, with the result that there is loss of energy at the sea surface. Additional discussion of the characteristics of airgun pulses is provided in Scripps application and in previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)).

Received sound levels have been modeled by L-DEO for two 105 in3 GI guns, but not for the two 45 in^3 GI-guns, in relation to distance and direction from the airguns. The model does not allow for bottom interactions, and is therefore most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI guns where sound levels of 190, 180, 170, and 160 dB microPascal-m (rms) are predicted to be received are shown in Table 1. Because the model results are for the larger 105 in^3 guns,

those distances are overestimates of the distances for the 45 in*3* guns.

TABLE 1. DISTANCES TO WHICH SOUND LEVELS 190, 180, 170, AND 160 DB MICROPASCAL-M (RMS) MIGHT BE RECEIVED FROM TWO 105 IN^3 GI AIRGUNS, SIMILAR TO THE TWO 45 IN^3 GI AIRGUNS THAT WILL BE USED DURING THE SEISMIC SURVEY IN THE SW PACIFIC OCEAN DURING FEBRUARY-MARCH 2005. DISTANCES ARE BASED ON MODEL RESULTS PROVIDED BY LAMONT-DOHERTY EARTH OBSERVATORY (L-DEO).

	Estimated Distances at Received Levels (m/ft)			
	190 dB	180 dB	170 dB	160 dB
Water Depth >1000	17/56	54/177	175/574	510/1673

Some empirical data concerning the 180-, and 160–dB distances have been acquired for several airgun configurations, including two GI-guns, based on measurements during an acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (Tolstoy *et al.*, 2004). Although the results are limited, the data showed that water depth affected the radii around the airguns where the received level would be 180 dB re 1 microPa (rms), NMFS' current injury threshold safety criterion applicable to cetaceans (NMFS, 2000). Similar depth-related variation is likely in the 190–dB distances applicable to pinnipeds. Correction factors were developed and implemented for previous IHAs for activities with water depths less than 1000 m (3281 ft), however, the proposed airgun survey will occur in depths 4000–5000 m (13,123–16,400 ft), so correction factors are not necessary here since the L-DEO model has been shown to be result in more conservative impact zones than indicated by the empirical measurements. Therefore, the assumed 180- and 190–dB radii are 54 m (177 ft) and 17 m (56 ft), respectively. Considering that the 2 GI-airgun array is towed 21 m (69 ft) behind the *Melville* and the vessel is 85 m (270 ft) long, the forward aspect of the 180–dB isopleth (lines of equal pressure) at its greatest depth will not exceed approximately the mid-ship line of the *Melville*. At the water surface, an animal would need to be between the vessel and the 450–m (1476 ft) long hydrophone streamer to be within the 180–dB isopleth.

Bathymetric Sonar and Sub-bottom Profiler

In addition to the 2 GI-airguns, a multi-beam bathymetric sonar and a low-energy 3.5–kHz sub-bottom profiler will be used during the seismic profiling and continuously when underway.

Sea Beam 2000 Multi-beam Sonar – The hull-mounted Sea Beam 2000 sonar images the seafloor over a 120°–wide swath to 4600 m (15092 ft) under the vessel. In ''deep'' mode (400–1000 m (1312–3281 ft), it has a beam width of 2°, fore-and-aft, uses very short (7–20 msec) transmit pulses with a 2–22 s repetition rate and a 12.0 kHz frequency sweep. The maximum source level is 234 dB microPa (rms).

Sub-bottom Profiler – The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the multi-beam sonar. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Melville*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 microPa (800 watts) while normal source output is 200 dB re 1 microPa (500 watts). Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Although the sound levels have not been measured directly for the sub-bottom profiler used by the *Melville*, Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a sub-bottom profiler similar to the Scripps unit with similar source output (i.e., 205 dB re 1 microPa m). For that profiler, the 160- and 180–dB re 1 microPa (rms) radii in the horizontal direction were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft) respectively, assuming spherical spreading. Thus the received level for the Scripps sub-bottom profiler would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, assuming spherical spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000).

Characteristics of Airgun Pulses

Discussion of the characteristics of airgun pulses was provided in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)) and is not repeated here. Reviewers are referred to those documents for additional information.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the SWPO area and its associated marine mammals can be found in the Scripps application and a number of documents referenced in that application, and is not repeated here. Forty species of cetacean, including 31 odontocete (dolphins and small- and large-toothed whales) species and nine mysticete (baleen whales) species, are believed by scientists to occur in the southwest Pacific in the proposed seismic survey area. Table 2 in the Scripps application summarizes the habitat, occurrence, and regional population estimate for these species. A more detailed discussion of the following species is also provided in the application: Sperm whale (*Physeter macrocephalus*), pygmy and dwarf sperm whales (*Kogia* spp.), southern bottlenose whale (*Hyperoodon planifrons*), Arnoux's beaked whale (*Berardius arnuxii*), Cuvier's beaked whale (*Ziphius cavirostris*), Shepherd's beaked whale (*Tasmacetus shepherdi*), Mesoplodont beaked whales (Andrew's beaked whale (*Mesoplodon bowdoini*), Blainville's beaked whale (*M. densirostris*), gingko-toothed whale (*M. ginkgodens*), Gray's beaked whale (*M. grayi*), Hector's beaked whale (*M. hectori*), spade-toothed whale (*M.*

traversii), strap-toothed whale (*M. layardii*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), long-finned pilot whale (*Globicephala melas*), short-finned pilot whale (*G. macrorhynchus*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (*Stenella longirostris*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), hourglass dolphin (*Lagenorhynchus cruciger*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), southern right whale dolphin (*Lissodelphis peronii*), spectacled porpoise (*Phocoena dioptrica*), humpback whale (*Megaptera novaeangliae*), southern right whale (*Eubalaena australis*), pygmy right whale (*Caperea marginata*), common minke whale (*Balaenoptera acutorostrata*), Antarctic minke whale (*Balaenoptera borealis*). Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*) and blue whale (*Balaenoptera musculus*). Because the proposed survey area spans a wide range of latitudes (25–50° S), tropical, temperate, and polar species are all likely to be found there. The survey area is all in deep-water habitat but is close to oceanic island (Society Islands, Australes Islands) habitats, so both coastal and oceanic species might be encountered. However, abundance and density estimates of cetaceans found there are provided for reference only, and are not necessarily the same as those that likely occur in the survey area.

Five species of pinnipeds could potentially occur in the proposed seismic survey area: southern elephant seal (*Mirounga leonina*), leopard seal (*Hydrurga leptonyx*), crabeater seal (*Lobodon carcinophagus*), Antarctic fur seal (*Arctocephalus gazella*), and the sub-Antarctic fur seal (*Arctocephalus tropicalis*). All are likely to be rare, if they occur at all, as their normal distributions are south of the Scripps survey area. Outside the breeding season, however, they disperse widely in the open ocean (Boyd, 2002; King, 1982; Rogers, 2002). Only three species of pinniped are known to wander regularly into the area (SPREP, 1999): the Antarctic fur seal, the sub-Antarctic fur seal, and the leopard seal. Leopard seals are seen are far north as the Cook Islands (Rogers, 2002).

More detailed information on these species is contained in the Scripps application, which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.*

Potential Effects on Marine Mammals

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The Scripps' application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by Scripps. The types of effects considered here are (1) tolerance, (2) masking of natural sounds, (2) behavioral disturbance, and (3) potential hearing impairment and other non-auditory physical effects (Richardson et al., 1995). Given the relatively small size of the airguns planned for the present project, its effects are anticipated to be considerably less than would be the case with a large array of airguns. Scripps and NMFS believe it is very unlikely that there would be any cases of temporary or especially permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to distances less than 500 m (1640 ft), the zone calculated for 160 dB or the onset of Level B harassment. Additional discussion on species-specific effects can be found in the Scripps application.

Tolerance

Numerous studies (referenced in Scripps, 2004) have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers, but that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. However, most measurements of airgun sounds that have been reported concerned sounds from larger arrays of airguns, whose sounds would be detectable farther away than that planned for use in the proposed survey. Although various baleen whales, toothed whales, and pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than are baleen whales. Given the relatively small and low-energy airgun source planned for use in this project, mammals are expected to tolerate being closer to this source than would be the

case for a larger airgun source typical of most seismic surveys.

Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited (due in part to the small size of the GI airguns), although there are very few specific data on this. Given the small acoustic source planned for use in the SWPO, there is even less potential for masking of baleen or sperm whale calls during the present research than in most seismic surveys (Scripps, 2004). GI-airgun seismic sounds are short pulses generally occurring for less than 1 sec every 6–10 seconds or so. The 6–10 sec spacing corresponds to a shot interval of approximately 21.5–36 m (71–118 ft). Sounds from the multi-beam sonar are very short pulses, occurring for 7–20 msec once every 2 to 22 sec, depending on water depth.

Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (Richardson *et al.*, 1986; McDonald *et al.*, 1995, Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Given the relatively small source planned for use during this survey, there is even less potential for masking of sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the airguns to be used in the SWPO. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These low frequencies are mainly used by mysticetes, but generally not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the marine mammal signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals relative to airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; as reviewed in Richardson *et al.*, 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing, pre-adaptation to tolerate some masking by natural sounds (Richardson *et al.*, 1995) and the relatively low-power acoustic sources being used in this survey, would all reduce the importance of masking marine mammal vocalizations.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. However, there are difficulties in defining which marine mammals should be counted as taken by harassment. For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not rise to the level of a disruption of a behavioral pattern. However, if a sound source would displace marine mammals from an important feeding or breeding area, such a disturbance may constitute Level B harassment under the MMPA. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is appropriate to resort to estimating how many mammals may be present within a particular distance of industrial activities or exposed to a particular level of industrial sound. With the possible exception of beaked whales, NMFS believes that this is a conservative approach and likely overestimates the numbers of marine mammals that are affected in some biologically important manner.

The sound exposure criteria used to estimate how many marine mammals might be harassed behaviorally by the seismic survey are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed information on potential disturbance effects on baleen whales, toothed whales, and pinnipeds can be found in Scripps's SWPO application and its Appendix A.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Current NMFS policy precautionarily sets impulsive sounds equal to or greater than 180 and 190 dB re 1 microPa (rms) as the exposure thresholds for onset of Level A harassment for cetaceans and pinnipeds, respectively (NMFS, 2000). Those criteria have been used in defining the safety (shut-down) radii for seismic surveys. However, those criteria were established before there were any data on the minimum received levels of sounds necessary to cause auditory impairment in marine mammals. As discussed in the Scripps application and summarized here,

1. The 180 dB criterion for cetaceans is probably quite precautionary, i.e., lower than necessary to avoid TTS let alone permanent auditory injury, at least for delphinids.

2. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.

3. The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

Because of the small size of the 2 45 in^3 GI-airguns, along with the planned monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause even the mildest (and reversible) form of hearing impairment. Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the 2 GI-airguns (and bathymetric sonar), and to avoid exposing them to sound pulses that might (at least in theory) cause hearing impairment. In addition, research and monitoring studies on gray whales, bowhead whales and other cetacean species indicate that

many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, Scripps and NMFS believe that it is especially unlikely that any of these non-auditory effects would occur during the proposed survey given the small size of the acoustic sources, the brief duration of exposure of any given mammal, and the planned mitigation and monitoring measures. The following paragraphs discuss the possibility of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) note that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002). Given the available data, the received level of a single seismic pulse might need to be on the order of 210 dB re 1 microPa rms (approx. 221 226 dB pk pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy (Finneran *et al.*, 2002). Seismic pulses with received levels of 200 205 dB or more are usually restricted to a zone of no more than 100 m (328 ft) around a seismic vessel operating a large array of airguns. Because of the small airgun source planned for use during this project, such sound levels would be limited to distances within a few meters directly astern of the *Melville*.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. However, TTS is not expected to occur during this survey given the small size of the source limiting these sound pressure levels to the immediate proximity of the vessel, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured, although exposures up to 183 dB re 1 microPa (rms) have been shown to be insufficient to induce TTS in California sea lions (Finneran et al., 2003). However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; Au *et al.*, 2000). For this research cruise therefore, TTS is unlikely for pinnipeds.

A marine mammal within a zone of less than 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of ≥205 dB, and possibly more pulses if the mammal moved with the seismic vessel. Also, around smaller arrays, such as the 2 GI-airgun array proposed for use during this survey, a marine mammal would need to be even closer to the source to be exposed to levels greater than or equal to 205 dB. However, as noted previously, most cetacean species tend to avoid operating airguns, although not all individuals do so. In addition, ramping up airgun arrays, which is now standard operational protocol for U.S. and some foreign seismic operations, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. Even with a large airgun array, it is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. However, with a large airgun array, TTS would be more likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow-riding, odontocetes would be at or above the surface, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. During this project, the anticipated 180–dB distance is less than 54 m (177 ft), the array is towed 21 m (69 ft) behind the *Melville* and the bow of the *Melville* will be 106 m (348 ft) ahead of the airguns and the 205–dB zone would be less than 50 m (165 ft). Thus, TTS would not be expected in the case of odontocetes bow riding during airgun operations and if some cetaceans did incur TTS through exposure to airgun sounds, it would very likely be a temporary and reversible phenomenon.

Currently, NMFS believes that, to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 microPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by Scripps during this activity are summarized in Table 1 in this document. These sound levels are not considered to be the levels at or above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS (at a time before TTS measurements for marine mammals started to become available), one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As noted here, TTS data that are now available imply that, at least for dolphins, TTS is unlikely to occur unless the dolphins are exposed to airgun pulses substantially stronger than 180 dB re 1 microPa (rms).

It has also been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Because of the slow ship speed, any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, as mentioned previously, ramping up the airgun array, which has become standard operational protocol for many seismic operators including Scripps, should allow cetaceans to move away

from the seismic source and to avoid being exposed to the full acoustic output of the GI airguns.

Permanent Threshold Shift (PTS)

When PTS occurs there is physical damage to the sound receptors in the ear. In some cases there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges. Although there is no specific evidence that exposure to pulses of airgun sounds can cause PTS in any marine mammals, even with the largest airgun arrays, physical damage to a mammal's hearing apparatus can potentially occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during recent controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Nachtigall *et al.*, 2003). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995). For impulse sounds with very rapid rise times (e.g., those associated with explosions or gunfire), a received level not greatly in excess of the TTS threshold may start to elicit PTS. Rise times for airgun pulses are rapid, but less rapid than for explosions.

Some factors that contribute to onset of PTS are as follows: (1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for odontocetes for exposure to a series of seismic pulses may be on the order of 220 dB re 1 microPa (pk-pk) (approximately 204 dB re 1 microPa rms), then the PTS threshold might be about 240 dB re 1 microPa (pk-pk). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson *et al.*, 1995; Caldwell and Dragoset, 2000). However, it is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance from the source. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. In summary, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient period of time) to cause permanent hearing impairment during this project. In the proposed project marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, and because of the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. This is due to the fact that even levels immediately adjacent to the 2 GI-airguns may not be sufficient to induce PTS because the mammal would not be exposed to more than one strong pulse unless it swam alongside an airgun for a period of time.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times. While there is no documented evidence that airgun arrays can cause serious injury, death, or stranding, the association of mass strandings of beaked whales with naval exercises and, an L-DEO seismic survey in 2002 have raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. Information on recent beaked whale strandings may be found in Appendix A of the Scripps application and in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)).

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to physical damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a September, 2002 stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the Ewing was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing*'s 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to date is not based on any physical

evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales. However, the present project will involve a much smaller sound source than used in typical seismic surveys. Considering this and the proposed monitoring and mitigation measures, any possibility for strandings and mortality is expected to be eliminated.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might theoretically occur in marine mammals exposed to strong underwater sound might include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no evidence that any of these effects occur in marine mammals exposed to sound from airgun arrays (even large ones). However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

It is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. That is especially so in the case of the present project where the airguns are small, the ship's speed is relatively fast (7 knots or approximately 13 km/h), and for the most part the survey lines are widely spaced with little or no overlap.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at that frequency, the ensuing resonance could cause damage to the animal. There may also be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed), 1999; Houser *et al.*, 2001).

A workshop (Gentry [ed.] 2002) was held to discuss whether the stranding of beaked whales in the Bahamas in 2000 (Balcomb and Claridge, 2001; NOAA and USN, 2001) might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. However, a short paper concerning beaked whales stranded in the Canary Islands in 2002 suggests that cetaceans might be subject to decompression injury in some situations (Jepson *et al.*, 2003). If so, that might occur if they ascend unusually quickly when exposed to aversive sounds. However, the interpretation that the effect was related to decompression injury is unproven (Piantadosi and Thalmann, 2004; Fernández *et al.*, 2004). Even if that effect can occur during exposure to mid-frequency sonar, there is no evidence that this type of effect occurs in response to low-frequency airgun sounds. It is especially unlikely in the case of this project involving only two small GI-airguns.

In summary, little is known about the potential for seismic survey sounds to cause either auditory impairment or other non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects. Also, the planned mitigation and monitoring measures are expected to minimize any possibility of serious injury, mortality or strandings.

Possible Effects of Mid-frequency Sonar Signals

A multi-beam bathymetric sonar (Sea Beam 2000, 12 kHz) and a sub-bottom profiler will be operated from the source vessel essentially continuously during the planned survey. Details about these sonars were provided previously in this document.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans generally (1) are more powerful than the Sea Beam 2000 sonar, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Sea Beam 2000). The area of possible influence of the Sea Beam 2000 is much smaller-a narrow band oriented in the cross-track direction below the source vessel. Marine mammals that encounter the Sea Beam 2000 at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses and vessel speed. Therefore, as harassment or injury from pulsed sound is a function of total energy received, the actual harassment or injury threshold for the bathymetric sonar signals (approximately 10 ms) would be at a much higher dB level than that for longer duration pulses such as seismic signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multi-beam sonar.

Masking by Mid-frequency Sonar Signals

Marine mammal communications will not be masked appreciably by the multi-beam sonar signals or the sub-bottom profiler given the low duty cycle and directionality of the sonars and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals from the Sea Beam 2000 sonar do not overlap with the predominant frequencies of the calls, which would avoid significant masking.

For the sub-bottom profiler, marine mammal communications will not be masked appreciably because of their relatively low power output, low duty cycle, directionality (for the profiler), and the brief period when an individual mammal may be within the sonar's beam. In the case of most odonotocetes, the sonar signals from the profiler do not overlap with the predominant frequencies in their calls. In the case of mysticetes, the pulses from the pinger do not overlap with their predominant frequencies.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have

included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned strandings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. However, all of these observations are of limited relevance to the present situation. Pulse durations from these sonars were much longer than those of the Scripps multi-beam sonar, and a given mammal would have received many pulses from the naval sonars. During Scripps' operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1–sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by Scripps and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of these data to free-ranging odontocetes is uncertain and in any case the test sounds were quite different in either duration or bandwidth as compared to those from a bathymetric sonar.

Scripps and NMFS are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the 12.0 kHz frequency of the *Melville*'s multi-beam sonar. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the individual animals. The pulsed signals from the sub-bottom profiler are much weaker than those from the multi-beam sonar and somewhat weaker than those from the 2 GI-airgun array. Therefore, significant behavioral responses are not expected.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys on Marine Mammals). However, the multi-beam sonars proposed for use by Scripps are quite different than sonars used for navy operations. Pulse duration of the bathymetric sonars is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beam-width. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy. Therefore, hearing impairment by multi-beam bathymetric sonar is unlikely.

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar. Sound levels from a sub-bottom profiler similar to the one on the *Melville* were estimated to decrease to 180 dB re 1 microPa (rms) at 8 m (26 ft) horizontally from the source (Burgess and Lawson, 2000), and at approximately 18 m downward from the source. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or especially permanent hearing impairment in marine mammals appear to be higher than 180 dB (see earlier discussion). Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimates of Take by Harassment for the ETPO Seismic Survey

Although information contained in this document indicates that injury to marine mammals from seismic sounds occurs at sound pressure levels significantly higher than 180 and 190 dB, NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 microPa rms. The rms level of a seismic pulse is typically about 10 dB less than its peak level and about 16 dB less than its pk-pk level (Greene, 1997; McCauley *et al.*, 1998; 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize or eliminate the possibility of Level A harassment or mortality. Scripps has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed SWPO seismic survey using data on marine mammal density (numbers per unit area) and estimates of the size of the affected area, as shown in the predicted RMS radii table (see Table 1). Because there is very little information on marine mammal densities in the proposed survey area, densities were used from two of Longhurst's (1998) biogeographic provinces north of the survey area that are oceanographically similar to the two provinces in which most of the seismic activities will take place.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 2 GI-gun array planned to be used for this project. The anticipated zone of influence of the multi-beam sonar and sub-bottom profiler are less than that for the airguns, so it is assumed that during simultaneous operations of these instruments that any marine mammals close enough to be affected by the multi-beam and sub-bottom profiler sonars would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar. Given their characteristics (described previously), no Level B harassment takings are considered likely when the multi-beam and sub-bottom profiler are operating but the airguns are silent.

Table 2 provides the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB. A detailed description on the methodology used by Scripps to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in Scripps's IHA application for the SWPO survey.

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TABLE 2. Estimates of the numbers of different individuals that might be exposed, to ≥160 dB during the proposed seismic surveys in the SW Pacific Ocean during February-March 2005. The proposed sound source is two GI guns each with a volume of 105 in^3. Received levels of airgun sounds are expressed in dB re 1 μPa (rms, averaged over pulse duration). Not all marine mammals will change their behavior when exposed to these sound levels, but some may alter their behavior when levels are lower. Species in italics are listed under the U.S. ESA as endangered.

Species	Number of Exposures to Sound Levels ≥160 dB		Number of Individuals Exposed to Sou Levels ≥160 dB	
	Best Estimate	Maximum Estimate	Best Estimate	% of Regional Pop'n[b]
Odontocetes				
Physeteridae				
Sperm whale	*9*	*19*	*9*	*0.0*
Pygmy sperm whale	8	35	8	NA
Dwarf sperm whale	6	66	6	*0.0*
Ziphiidae				
Southern bottlenose whale	17	93	17	*0.0*
Arnoux's beaked whale	3	14	2	NA
Cuvier's beaked whale	4	23	4	*0.0*
Shepard's beaked whale	2	9	2	NA
Andrew's beaked whale	2	9	2	NA
Blaineville's beaked whale	4	23	4	NA
Ginkgo-toothed beaked whale	1	5	1	NA
Gray's beaked whale	4	23	4	NA
Hector's beaked whale	1	5	1	NA
Spade-toothed beaked whale	1	5	1	NA
Strap-toothed beaked whale	3	19	3	NA
Delphinidae				
Rough-toothed dolphin	247	440	243	0.1
Bottlenose dolphin	247	440	243	0.1
Pantropical spotted dolphin	1235	2202	1215	0.1
Spinner dolphin	618	1101	608	0.1
Striped dolphin	124	220	122	0.0
Common dolphin	124	220	122	0.0
Hourglass dolphin	618	1101	608	0.2
Fraser's dolphin	124	220	122	0.0
Southern right-whale dolphin	371	660	365	NA
Risso's dolphin	371	660	365	0.2
Melon-headed whale	4	19	4	0.0
Pygmy killer whale	7	39	7	0.0
False killer whale	11	58	11	0.0
Killer whale	18	97	18	0.1
Short-finned pilot whale	18	97	18	0.0
Long-finned pilot whale	29	155	28	0.0
Phocoenidae				
Spectacled porpoise	114	1181	112	NA
Mysticetes				
Southern right whale	*2*	*5*	*2*	*NA*
Pygmy right whale	2	3	2	NA
Humpback whale	*2*	*3*	*2*	*0.0*
Minke whale	32	61	31	0.0
Dwarf minke whale	3	6	3	NA
Bryde's whale	4	8	4	0.0
Sei whale	*4*	*8*	*4*	*0.0*
Fin whale	*2*	*5*	*2*	*0.0*
Blue whale	*2*	*3*	*2*	*0.1*
Pinnipeds				
Southern elephant seal	23 (8)	NA	22 (22)	0.0
Leopard seal	46 (16)	NA	45 (45)	0.1
Crabeater seal	23 (8)	NA	22 (22)	0.0
Antarctic fur seal	46 (16)	NA	45 (45)	0.0
Sub-antarctic fur seal	46 (16)	NA	45 (45)	NA

[a] Best estimate and maximum estimates of density are from Table 3 in Scripps (2004)

[b] Regional population size estimates are from Table 2 in Scripps (2004).

[c] NA indicates that regional population estimates are not available.

Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3.2–4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel when large arrays have been used. However, reactions at the longer distances appear to be atypical of most species and situations, and to large arrays. Furthermore, if they are encountered, the numbers of mysticetes estimated to occur within the 160–dB isopleth in the survey area are expected to be low. In addition, the estimated numbers presented in Table 2 are considered overestimates of actual numbers for three primary reasons. First, because the survey is scheduled for the end of the austral summer, some of the mysticetes and some species of odontocetes are expected to be present

in feeding areas south of the survey area. Second, the estimated 160- and 170–dB radii used here are probably overestimates of the actual 160- and 170–dB radii at deep-water sites (Tolstoy *et al.* 2004) such as the SWPO survey area. Third, Scripps plans to use smaller GI guns than those on which the radii are based.

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the small size and the relatively low sound output of the 2 GI-airguns to be used, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a very small area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds ≥160 dB re 1 microPa (rms) represent 0 to approximately 0.2 percent of the populations of each species that may be encountered in the survey area. The assumed population sizes used to calculate the percentages are presented in Table 2 of the Scripps application. For species listed as endangered under the ESA, the estimates are significantly less than 0.1 percent of the SWPO population of sperm, humpback, sei, and fin whales; probably less than 0.1 percent of southern right whales; and 0.1 percent of blue whales (Table 2). In the cases of mysticetes, beaked whales, and sperm whales, the potential reactions are expected to involve no more than small numbers (2–32) of individual cetaceans. The sperm whale is the endangered species that is most likely to be exposed, and their SWPO population is approximately 140,000 (data of Butterworth et al. 1994 with g(0) correction from Barlow (1999) applied).

Larger numbers of delphinids may be affected by the proposed seismic study, but the population sizes of species likely to occur in the operating area are large, and the numbers potentially affected are small relative to the population sizes (see Table 2). The best estimate of number of individual delphinids that might be exposed to sounds 160 dB re 1 microPa (rms) represents significantly less than 0.01 percent of the approximately 8,200,000 dolphins estimated to occur in the SWPO, and 0–0.2 percent of the populations of each species occurring there (Table 2).

Mitigation measures such as controlled speed, course alteration, observers, ramp ups, and power downs or shut downs when marine mammals are seen within defined ranges should further reduce short-term reactions, and minimize any effects on hearing. In all cases, the effects are expected to be short-term, with no lasting biological consequence. In light of the type of take expected and the small percentages of affected stocks of cetaceans, the action is expected to have no more than a negligible impact on the affected species or stocks of cetaceans.

Effects on Pinnipeds

Five pinniped species-the sub-Antarctic fur seal, Antarctic fur seal, crabeater seal, leopard seal, and southern elephant seal-may be encountered at the survey sites, but their distribution and numbers have not been documented in the proposed survey area. An estimated 22–45 individuals of each species of seal may be exposed to airgun sounds with received levels ≥ 160 dB re 1 microPa (rms). The estimates of pinnipeds that may be exposed to received levels ≥ 160 dB are probably overestimates of the actual numbers that will be affected significantly. The proposed survey would have, at most, a short-term effect on their behavior and no long-term impacts on individual pinnipeds or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. As is the case for cetaceans, the short-term exposures to sounds from the two GI-guns are not expected to result in any long-term consequences for the individuals or their populations and the activity is expected to have no more than a negligible impact on the affected species or stocks of pinnipeds.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur at somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances from the source. Also, many of the fish that might otherwise be within the injury-zone are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the passing seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish.

Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankton that are very close to the source may react to the airgun's shock wave. These animals have an

exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankton to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

There is no known legal subsistence hunting for marine mammals in the SWPO, so the proposed Scripps activities will not have any impact on the availability of these species or stocks for subsistence users.

Mitigation

For the proposed seismic survey in the SWPO during February-March 2005, Scripps will deploy 2–GI airguns as an energy source, with a total discharge volume of 90 in3. The energy from the airguns will be directed mostly downward. The directional nature of the airguns to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the small size of these airguns is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives.

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this document), will be implemented for the subject seismic surveys: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2) shut-down procedures; and (3) ramp-up procedures. Because the safety radius for cetaceans is only 54 m (177 ft) the use of passive acoustics to detect vocalizing marine mammals is not warranted for this survey. Similarly, and because the *Melville* will be transiting a distance of approximately 11,000 km (5940 nm) during the survey period at a speed of approximately 7 knots, aerial and secondary vessel support is not warranted.

Speed and Course Alteration

If a marine mammal is detected outside its respective safety zone (180 dB for cetaceans, 190 dB for pinnipeds) and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the mammal appears likely to enter the safety zone, further mitigative actions will be taken (i.e., either further course alterations or shut-down of the airguns).

Shut-down Procedures

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the animal enter the safety radius, the airguns will be shut down before the animal is within the safety radius. Likewise, if a marine mammal is already within the safety radius when first detected, the airguns will be shut down immediately.

Following a shut-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, bottlenose and beaked whales.

Ramp-up Procedure

A ''ramp-up'' procedure will be followed when the airguns begin operating after a period without airgun operations. The 2–GI guns will be added in sequence 5 minutes apart. During ramp-up procedures, the safety radius for the 2–GI guns will be maintained.

During the day or night, ramp-up cannot begin from a shut-down unless the entire 180–dB safety radius has been visible for at least 30 minutes prior to the ramp up (i.e., no ramp-up can begin in heavy fog or high sea states). During nighttime operations, if the entire safety radius is visible using either vessel lights or night-vision devices (NVDs), then start up of the airguns from a shut down may occur. Considering that the safety zone will be an area approximately from mid-ship sternward to the area of the hydrophone streamer and extending only about 46 m (ft) beyond the vessel, NMFS believes that either deck lighting or NVDs will be capable of locating any marine mammal that might enter the safety zone at night.

Comments on past IHAs raised the issue of prohibiting nighttime operations as a practical mitigation measure. However, this is not practicable due to cost considerations and ship time schedules. The daily cost to the Federal Government to operate vessels such as *Melville* is approximately $33,000-$35,000 /day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, each trip could require an additional three to five days to complete, or up to $175,000 more, depending on average daylight at the time of work.

If a seismic survey vessel is limited to daylight seismic operations, efficiency would also be much reduced. Without commenting specifically on how that would affect the present project, for seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys; reduction in the total number of seismic cruises annually due to longer cruise durations; a need for additional vessels to conduct the seismic operations; or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

Marine Mammal Monitoring

Scripps must have at least two visual observers on board the *Melville*, and at least one must be an experienced marine mammalsw observer that NMFS has approved in advance of the start of the PO cruise. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations, during any nighttime start-ups of the airguns and at night. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after a shut-down. NMFS has preliminarily determined that a monitoring requirement for

observers to be on watch at night whenever daytime monitoring resulted in one or more shut-down situations due to marine mammal presence is not warranted for this operation since the *Melville* will be transiting the area and not remaining in the area where this requirement would provide protection for marine mammals. With a ship speed of 7 knots, the *Melville* may be a number of miles from the marine mammal siting/shut-down area by night-time.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. Scripps bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are on stand-by and not required to be on watch at all times. The observer(s) and bridge watch will watch for marine mammals from the highest practical vantage point on the vessel or from the stern of the vessel, whichever provides the greatest total visibility of the safety zone.

In addition, biological observers are required to record biological information on marine mammals sighted outside the safety zone, but within the 160–dB isopleth. For this activity, the observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-finding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the GI-airguns are shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers are not required to be on duty during ongoing seismic operations at night (although they may do so); bridge personnel will watch for marine mammals during this time and will call for the airguns to be shut-down if marine mammals are observed in or about to enter the safety radii. However, a biological observer must be on standby at night and available to assist the bridge watch if marine mammals are detected. If the airguns are ramped-up at night (see previous section), two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using either deck lighting or NVDs that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has preliminarily determined that the proposed mitigation and monitoring ensures that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array; if ramp-up is required, two marine mammal observers will be required to monitor the safety radii using shipboard lighting or NVDs for at least 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible.

Reporting

Scripps will submit a report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during February and March, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, the National Science Foundation (NSF), the agency funding Scripps, has begun consultation on the proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the SWPO oceanographic surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the SWPO off may result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this preliminary determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that it is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be well within a few dozen meters of the vessel because of the small acoustic source; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to the distance from the seismic vessel to the 180–dB isopleth. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program will not interfere with any legal subsistence hunts, since seismic operations will not take place in subsistence whaling and sealing areas and will not affect marine mammals used for subsistence purposes.

Proposed Authorization

NMFS proposes to issue an IHA to Scripps for conducting a oceanographic seismic survey in the SWPO, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the

availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: November 26, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102204A]

Incidental Take of Marine Mammals Incidental to Specified Activities; Taking of California Sea Lions, Pacific Harbor Seals and Northern Elephant Seals Incidental to Research Surveys at San Nicolas Island, Ventura County, CA

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

ACTION: Notice of receipt of application and proposed incidental harassment authorization renewal; request for comments.

SUMMARY: NMFS has received a request from Glenn R. VanBlaricom for a renewal of his Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the assessment of black abalone populations at San Nicolas Island (SNI), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to renew this IHA for 1 year.

DATES: Comments and information must be received no later than January 3, 2005.

ADDRESSES: You may submit comments on the application and proposed authorization, using the identifier 102204A, by any of the following methods:

- E-mail: *PR1.102204A@noaa.gov* - you must include the identifier 102204A in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.
- Hand-delivery or mailing of paper, disk, or CD-ROM comments: Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

To help us process and review your comments more efficiently, please use only one method. A copy of the application containing a list of references used in this document may be obtained by writing to the address above or by telephoning the contacts listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, NMFS, (301) 713–2322 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental but not intentional taking 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 regulations are issued.

Permission may be granted if the Secretary finds that the total taking will have 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 actions 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].

Summary of Request

On August 31, 2004, NMFS received a letter from Glenn R. VanBlaricom, Ph.D., Washington Cooperative Fish and Wildlife Research Unit, requesting renewal of an IHA that was first issued to him on September 23, 2003 (68 FR 57427, October 3, 2003) for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends over time in black abalone populations at permanent study sites.

Population trend data for black abalone populations are important and needed for several reasons. First, the reintroduction of sea otters to SNI since 1987 raises the possibility of conflict between sea otter conservation and abalone populations because abalones are often significant prey for sea otters. Second, the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992 has resulted in dramatically increased rates of abalone mortality at the island. Third, the combined effects of sea otter predation and abalone withering syndrome, following several decades during which black abalones may have been over-harvested in commercial and recreational fisheries, may cause reduction of black abalone populations to the point where risk of extinction increases. In light of these factors NMFS considers California populations of black abalone a species of concern. Long-term abalone population trend data from SNI is needed to determine if drastic population declines continue and if extinction risk becomes high.

Project Description

Nine permanent research study areas are located in rocky intertidal habitats on SNI in Ventura County, CA. To date, the applicant has made 97 separate field trips to SNI from September 1979 through March 2004, participating in abalone survey work on 514 different days at nine permanent study sites. Quantitative abalone surveys on SNI began in 1981, at which point permanent research sites were chosen based on the presence of dense patches of abalone in order to monitor changes over time in dense abalone aggregations. Research is conducted by counting black abalone in plots of 1 m2 along permanent transect lines in rocky intertidal habitats at each of the nine study sites on the island. Permanent transect lines are demarcated by stainless steel eyebolts embedded in the rock substrata and secured with marine epoxy compound. Lines are placed temporarily between bolts during surveys and are removed once surveys

are completed. Survey work is done by two field biologists working on foot; therefore, monitoring of black abalone populations at SNI can be done only during periods of extreme low tides. The exact date of a visit to any given site is difficult to predict because variation in surf height and sea conditions can influence the safety of field biologists as well as the quality of data collected. In most years survey work is done during the months of January, February, March, July, November, and December because of optimal availability of low tides. All work is done only during daylight hours because of safety considerations.

Research is expected to extend over a period of 3 years, from 2005 through 2007, with additional work in future years remaining a possibility pending funding and staff. Surveys of abalones will be conducted each year during this 3-year period. During each survey year, each of the nine permanent study sites at SNI will be visited twice. Each visit to a given study site lasts for a maximum of 4 hours, after which the site is vacated.

The implicated marine mammal populations at SNI, especially California sea lions and northern elephant seals, have grown substantially since the beginning of abalone research in 1979 and have occupied an expanded distribution on the island due to population growth. Sites previously accessible with no risk of marine mammal harassment are now being utilized by marine mammals at levels such that approach without the possibility of harassment is difficult. Of the nine study sites used for the abalone surveys, only two sites can be occupied without the possibility of disturbing at least one species of pinniped; therefore, an IHA is warranted.

Description of Habitat and Marine Mammals Affected by the Activity

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds. On SNI, three pinniped species (northern elephant seal, Pacific harbor seal, and California sea lion) can be expected to occur on land in the vicinity of abalone research sites either regularly or in large numbers during certain times of the year. In addition, a single adult male Guadalupe fur seal (*Arctocephalus townsendi*) was seen at one abalone research site on two occasions during the summer months in the mid–1980's; however, there have been no sightings of this species on the island since then. Further information on the biology and distribution of these species and others in the region can be found in Dr. VanBlaricom's application, which is available upon request (see **ADDRESSES**), and the Marine Mammal Stock Assessment Reports, which are available online at *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/individual__sars.html*.

Marine Mammal Impacts

The applicant requests renewal of the IHA issued to him for incidental takes, by Level B harassment only, of California sea lions, Pacific harbor seals, and northern elephant seals. The applicant has planned for additional fieldwork beginning in early January, 2005, through December, 2005. Sites occupied by Guadalupe fur seals will be vacated without taking by harassment; therefore authorization for taking of Guadalupe fur seals by harassment is not requested.

Variable numbers of sea lions, harbor seals, and elephant seals typically haul out near seven of the nine study sites used for abalone research, with breeding activity occurring at four of these seven sites. Pinnipeds likely to be affected by abalone research activity are those that are hauled out on land at or near study sites. For the previous IHA, the applicant estimated that pinnipeds typically haul out near six of the nine study sites, with breeding activity occurring at five of these six sites. However, during field work in 2003 and 2004, it became apparent that non-breeding California sea lions had begun to haul out regularly at an additional abalone study site, and that sea lions and elephant seals hauled out at one of the study sites are non-breeding animals; therefore, it has become evident that seven of the nine study sites are used by pinnipeds for hauling out, with breeding activity occurring at four of these seven sites.

Incidental harassment may result if hauled animals move to increase their distance from persons involved in abalone surveys. Although marine mammals will not be deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out directly upon the permanent abalone study plots. In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of serious injury or death to hauled animals is very low.

One exception to the low risk of marine mammal injury or mortality associated with abalone research would be if disturbances occur during breeding season, as it is possible that mothers and dependent pups may become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups may increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed. Trampling increases the risk of injury or death to the pups.

However, because of mitigation measures proposed, the applicant expects that only Level B incidental harassment may occur associated with the proposed continuation of black abalone research at SNI and that this research will result in no detectable impact on these marine mammal species or stocks or on their habitats. There is no anticipated impact of the research activity on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Harbor seals are widely distributed in the North Atlantic and North Pacific. In California, approximately 400–500 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan 1996). In California, the population growth rate of harbor seals appears to be slowing, but remains positive. A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. The estimated population of harbor seals in California is 27,863 (NOAA Draft Stock Assesment Report, 2003), with an estimated minimum population of 25,720 for the California stock of harbor seals.

California sea lions primarily use the central California area to feed during the non-breeding season. Breeding areas of the sea lion are on islands located in southern California, western Baja California, and the Gulf of California. Population estimates for the U.S. stock of California sea lions (extending from the U.S./Mexico border north into Canada) range from a minimum of 138,881 to 237,000 animals, with a current growth rate of 5.4 to 6.1 percent per year (Carretta et al. 2003).

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico) primarily on offshore islands (Stewart et al 1994). Based on trends in pup counts, northern elephant seal colonies appear to be

increasing in California through 2001. The population size of northern elephant seals in California is estimated to be 101,000 animals, with a minimum population estimate of 60,547 (Carretta et al. 2002).

The distribution of pinnipeds hauled out on beaches is not even. The number of marine mammals disturbed will vary by month and location, and, compared to animals hauled out on the beach farther away from survey activity, only those animals hauled out closest to the actual survey transect plots contained within each research site are likely to be disturbed by the presence of researchers and alter their behavior or attempt to move out of the way. Based on past observations made by the applicant in 2003 and 2004, assuming a maximum level of incidental harassment of marine mammals at each site during periods of visitation, the applicant estimates that maximum total possible numbers of individuals that may be incidentally harassed (resulting from one complete cycle of visits to the nine study sites) would be 1600 California sea lions, 75 Pacific harbor seals, and 445 northern elephant seals. Two visit cycles are anticipated during the year-long validity of the IHA. As noted earlier, any site occupied by Guadalupe fur seals will be vacated immediately and no taking of this species will occur.

Mitigation

Several mitigation measures to reduce the potential for harassment from population assessment research surveys will be implemented as part of the SNI abalone research activities. Primarily, mitigation of the risk of disturbance to pinnipeds simply requires that researchers are judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be re-occupied by any hauled marine mammals that may have been disturbed by the presence of abalone researchers.

The potential risk of injury or mortality will be mitigated with measures required under the proposed authorization. Disturbances to females with dependent pups (in the cases of California sea lions and Pacific harbor seals) can be mitigated to the greatest extent practicable by avoiding visits to the four black abalone study sites with resident pinnipeds during periods of breeding and lactation from mid-February through the end of October. The previous authorization required the applicant to avoid conducting survey research at certain study sites that may have breeding and/or lactating pinnipeds during the period from February through October. However, during field work in early 2004 it became evident that pupping by harbor seals at these sites does not begin until the latter half of February. Therefore, for the current proposed authorization this period would be shortened to exclude the first half of February. During this period, abalone research would be confined to the other five sites where pinniped breeding and post-partum nursing does not occur. Limiting visits to the four breeding and lactation sites to periods when these activities do not occur (November, December, January, and the first half of February) will reduce the possibility of incidental harassment and reduce the potential for serious injury or mortality of dependent California sea lion pups and Pacific harbor seal pups to near zero.

Northern elephant seal pups are present at four sites during winter months. Risks of trampling of elephant seal pups by adults are limited to the period from January through March when pups are born, nursed, and weaned, ending about 30 days post-weaning when pups depart land for foraging areas at sea. However, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. Possible takes of northern elephant seal pups will be minimized by avoiding the proximity of hauled seals and any seal pups during approach to the study sites and during collection of abalone population data. Thus, all study sites can be occupied by researchers at any time of the year without disturbing elephant seals.

One individual Guadalupe fur seal was seen at study site 8 on two separate occasions during the summer months in the mid–1980's. No individuals of this species have been seen during abalone research work since then. Thus, limitation of research visits to site 8 to the period November through January eliminates the potential for taking of Guadalupe fur seals by harassment. Guadalupe fur seals are distinctive in appearance and behavior, and can be readily identified at a distance without any disturbance. Harassment, injury, or mortality of Guadalupe fur seals will be prevented by immediately suspending research work and vacating any study area in which this species is seen. Therefore, an authorization for the taking of Guadalupe fur seals by harassment is neither required nor requested. Sea otters are not expected ashore during the time periods when the research activities would be conducted. However, if sea otters are sighted ashore during the abalone research, Dr. VanBlaricom would follow similar procedures in place for other listed species. Research activities will be suspended upon any areas that California sea otters are occupying.

Monitoring

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), U.S. Navy. The U.S. Navy owns SNI and closely regulates all civilian access to and activity on the island, including biological research. Therefore, monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center. Also, long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Monitoring requirements in relation to Dr. VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD, allowing transmittal of this information to appropriate agencies and personnel.

Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the year-long field season. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Endangered Species Act (ESA)

NMFS has preliminarily determined that the proposed action will have no effect on any ESA listed species or critical habitat.

National Environmental Policy Act (NEPA)

In accordance with section 6.03 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing NEPA, May 20, 1999), NMFS has preliminarily determined that the proposed issuance of this IHA to Dr. VanBlaricom by NMFS meets the definition of a ''Categorical Exclusion'' and is exempted from further environmental review. NMFS will continue to review the action to include consideration of any comments either on this preliminary determination or on the issuance of the IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of abalone research, as described in this document and in the application for an IHA, should result, at worst, in the temporary modification in behavior by California sea lions, Pacific harbor seals and northern elephant seals. The effects of abalone research surveys on SNI are expected to be limited to short term and localized changes in behavior involving relatively small numbers of pinnipeds. While behavioral modifications, including temporarily vacating onshore haulouts, may be made by these species to avoid the presence and nearness of abalone researchers, this action is expected to have a negligible impact on the animals. In addition, no take by injury or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to Dr. Glenn R. VanBlaricom for the potential harassment of small numbers of Pacific harbor seals, California sea lions and northern elephant seals incidental to abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of Pacific harbor seals, California sea lions and northern elephant seals and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: November 29, 2004.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–26636 Filed 12–2–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed document entitled: AmeriCorps*National, State and Indian Tribes and U.S. Territories 2005 Application Instructions. Copies of the document can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 1, 2005.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to Kimberly Mansaray at *kmansaray@cns.gov.*

(2) By fax to 202–565–2791, Attention Ms. Kimberly Mansaray.

(3) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, 9th Floor, Attn: Ms. Kimberly Mansaray, 1201 New York Avenue NW., Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Mansaray, (202) 606–5000, ext. 249.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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.

I. Background

The Corporation for National and Community Service, through its national service programs and projects: (1) Provides opportunities for all Americans to serve; (2) affords members with meaningful, valuable, and enriching experiences; and (3) supports a continued ethic of volunteer service. The AmeriCorps*National, State and Indian Tribes and U.S. Territories 2005 Application Instructions provide potential applicants with information necessary for completing an application for funds to operate a State, National, Indian Tribe or U.S. Territory AmeriCorps program.

II. Current Action

Type of Review: Renewal with revisions.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*National, State and Indian Tribes and U.S. Territories 2005 Application Instructions.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for grant funds.

Total Respondents: 2,000 responses annually.

Frequency: Once annually.

Average Time Per Response: 10 hours.

Estimated Total Burden Hours: 20,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice 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: November 29, 2004.

Rosie K. Mauk,

Director of AmeriCorps.

[FR Doc. 04–26643 Filed 12–2–04; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed document entitled: AmeriCorps Education Awards Program 2005 Application. Copies of the document can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 1, 2005.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to Kimberly Mansaray at *kmansaray@cns.gov.*

(2) By fax to 202–565–2791, Attention Ms. Kimberly Mansaray.

(3) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, 9th Floor, Attn: Ms. Kimberly Mansaray, 1201 New York Avenue NW., Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Mansaray, (202) 606–5000, ext. 249.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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.

I. Background

The Corporation for National and Community Service, through its national service programs and projects: (1) Provides opportunities for all Americans to serve; (2) affords members with meaningful, valuable, and enriching experiences; and (3) supports a continued ethic of volunteer service. The AmeriCorps Education Awards Program 2005 Application Instructions provide potential applicants with information necessary for completing an application for funds to operate an AmeriCorps Education Awards program.

II. Current Action

Type of Review: Renewal with revisions.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Education Awards Program 2005 Application.

OMB Number: 3045–0065.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for grant funds.

Total Respondents: 300 respondents annually.

Frequency: Once annually.

Average Time Per Response: 8 hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice 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: November 29, 2004.

Rosie K. Mauk,

Director of AmeriCorps.

[FR Doc. 04–26644 Filed 12–2–04; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed document entitled: Administrative, Program Development Assistance & Training, Disability Funds. Copies of the document can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 1, 2005.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to

Kimberly Mansaray at *kmansaray@cns.gov.*

(2) By fax to 202–565–2791, Attention Ms. Kimberly Mansaray.

(3) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, 9th Floor, Attn: Ms. Kimberly Mansaray, 1201 New York Avenue NW., Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Mansaray, (202) 606–5000, ext. 249.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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.

I. Background

The Corporation for National and Community Service, through its national service programs and projects: (1) Provides opportunities for all Americans to serve; (2) affords members with meaningful, valuable, and enriching experiences; and (3) supports a continued ethic of volunteer service. The Administrative, Program Development Assistance & Training, Disability Funds application instructions provide State Commissions with information necessary for completing applications for commission administrative funds, program development assistance and training (PDAT) funds, and disability placement funds.

II. Current Action

Type of Review: New information collection; currently approved through emergency clearance.

Agency: Corporation for National and Community Service.

Title: Administrative, Program Development Assistance & Training, Disability Funds.

OMB Number: 3045–0099.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for grant funds.

Total Respondents: 55 respondents annually.

Frequency: Once annually.

Average Time Per Response: 30 hours.

Estimated Total Burden Hours: 1,650 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice 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: November 29, 2004.

Rosie K. Mauk,

Director of AmeriCorps.

[FR Doc. 04–26645 Filed 12–2–04; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed document entitled: South Dakota AmeriCorps Application Instructions. Copies of the document can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by February 1, 2005.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to Kimberly Mansaray at *kmansaray@cns.gov.*

(2) By fax to 202–565-2791, Attention Ms. Kimberly Mansaray.

(3) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, 9th Floor, Attn: Ms. Kimberly Mansaray, 1201 New York Avenue NW., Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Mansaray, (202) 606–5000, ext. 249.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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.

I. Background

The Corporation for National and Community Service, through its national service programs and projects: (1) Provides opportunities for all Americans to serve; (2) affords members with meaningful, valuable, and enriching experiences; and (3) supports

a continued ethic of volunteer service. The South Dakota AmeriCorps Application Instructions provide potential applicants in South Dakota with information necessary for completing an application for funds to operate an AmeriCorps program.

II. Current Action

Type of Review: New information collection; currently approved through emergency clearance.

Agency: Corporation for National and Community Service.

Title: South Dakota AmeriCorps Application Instructions.

OMB Number: 3045–0100.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for grant funds.

Total Respondents: 7 respondents annually.

Frequency: Once annually.

Average Time Per Response: 10 hours.

Estimated Total Burden Hours: 70 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice 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: November 29, 2004.

Rosie K. Mauk,

Director of AmeriCorps.

[FR Doc. 04–26646 Filed 12–2–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Airspace Training Initiative Environmental Impact Statement

AGENCY: Air Combat Command, United States Air Force.

ACTION: Notice of intent.

SUMMARY: The United States Air Force is issuing this Notice of Intent (NOI) to announce that it is conducting an Environmental Impact Statement (EIS) to describe the proposed action for the Airspace Training Initiative. The proposed action would enhance the F–16 aircraft training mission for Shaw AFB and McEntire Air National Guard Station (ANGS). This NOI describes the Air Force's scoping process and identifies the Air Force's point of contact.

The Air Force conducted a series of scoping meetings in South Carolina and Georgia during September 2004 to receive public input on alternatives, concerns, and issues to be addressed in an environmental analysis. Based on the input received from the scoping meetings, the Air Force has determined that an EIS is required. The EIS will consider environmental issues identified by the public and agencies during the September meetings and received from correspondence during the scoping process. The Air Force has currently identified changes to airspace and aircraft noise as potential key issues requiring detailed analysis in the EIS.

No additional scoping meetings are scheduled. However, based upon interest expressed during community outreach scoping meetings, the public comment period has been extended through January 5, 2005. All written comments on the scope of alternatives and impacts received, as a result of the scoping meetings, or during the extended scoping period will be considered in the preparation of this EIS.

The proposed EIS will be prepared in compliance with the National Environmental Policy Act (NEPA) of 1969 (*42 U.S.C. 4321–4347*), the Council on Environmental Quality NEPA Regulations (40 CFR 1500–1508); and the Air Force's Environmental Impact Analysis Process (EIAP) (Air Force Instruction 32–7061 as promulgated at 32 CFR 989) to determine the potential environmental consequences of the Airspace Training Initiative. The Federal Aviation Administration is participating as a cooperating agency in this process.

As part of the Airspace Training Initiative proposal, the Air Force will analyze alternatives to modify Shaw AFB's airspace to enhance the ability of the 20th Fighter Wing at Shaw AFB and the 169th Fighter Squadron at McEntire ANGS to train as they need to fight in the evolving Global War on Terror. The proposed action includes the following:

—Creating a new Military Operations Area (MOA), that joins the western boundary of the existing Gamecock D MOA with the eastern boundary of existing Poinsett Electronic Combat Range (ECR).

—Lowering the floor of the existing Gamecock D MOA from 10,000 to 5,000 feet mean sea level (MSL) and combining and using Gamecock C and Gamecock D MOAs concurrently and simultaneously.

—Raising the ceiling on the existing Poinsett Low MOA from 2,500 feet MSL to 5,000 feet MSL.

—Modifying the boundary of the existing Bulldog A MOA to match that of Bulldog B MOA and lowering the current 11,000 foot MSL floor of the ''shelf area'' to 500 feet above ground level (AGL) to coincide with the Bulldog A floor.

—Extending the use of defensive training with training chaff and flares into the new and modified airspace. Developing training transmitter sites beneath the Bulldog and Gamecock MOAs and along the coast of South Carolina.

Alternatives to the proposed action include variations in altitude structure, special use airspace boundaries, extent and number of transmitter sites, and a no-action alternative.

The Air Force will accept comments at any time during the environmental analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, the scoping period has been extended. Comments should be submitted to the address below by January 5, 2005.

Point of Contact: Ms. Linda DeVine, HQ ACC/CEVP, 129 Andrews St., Suite 102, Langley AFB, VA 23665–2769, (757) 764–9434.

Anne Rollins,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 04–26598 Filed 12–2–04; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Notice of Meeting Changes

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

SUMMARY: This notice advises interested parties of changes concerning the December 2004 meeting of the National Advisory Committee and amends information provided in the original meeting notice published in the October 14, 2004 **Federal Register** (69 FR 60991).

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–

877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The changes to the agenda for the December 2004 meeting of the National Advisory Committee, to be held at the Ritz Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA, are as follows:

(1) On Monday, December 13, and Tuesday, December 14, 2004, the National Advisory Committee is now scheduled to meet from 8 a.m. to approximately 6 p.m. The National Advisory Committee will not meet on Wednesday, December 15, 2004.

(2) On Wednesday, December 15, the Accreditation and State Liaison Staff will provide an informational briefing on the new Web-based process for electronic submission of petitions for recognition. The briefing, which will include a question-and-answer session, will begin at 10 a.m. and end at approximately 11:30 a.m.

(3) The agency listed below, which was originally scheduled for review during the National Advisory Committee's December 2004 meeting, will be postponed for review until the Spring 2005 meeting.

1. The petition for renewal of recognition submitted by the National Accrediting Commission of Cosmetology Arts and Sciences (Current scope of recognition: The accreditation of postsecondary schools and departments of cosmetology arts and sciences and massage therapy.) (Requested scope of recognition: The accreditation of postsecondary schools and departments of cosmetology arts and sciences and massage therapy in the United States.)

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Authority: 5 U.S.C. Appendix 2.

Dated: November 29, 2004.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E4–3454 Filed 12–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Draft Environmental Impact Statement; Notice of Availability

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the document, *Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Draft Environmental Impact Statement* (DOE/EIS–0335D) for the Moab, Utah, Uranium Mill Tailings Remedial Action (UMTRA) Project Site, for public comment. The draft environmental impact statement (EIS) analyzes the potential environmental impacts associated with alternatives for remediating contaminated soils, tailings, and ground water at the Moab Uranium Mill Tailings Site (Moab site), Grand County, Utah, and contaminated soils in adjacent public and private properties (vicinity properties) near the Moab site. The draft EIS also contains a Floodplain and Wetlands Assessment.

The Department prepared this draft EIS in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations that implement the procedural provisions of NEPA (40 CFR Parts 1500–1508), and the DOE procedures implementing NEPA (10 CFR Part 1021). The U.S. Environmental Protection Agency (EPA) published a notice of availability of the draft EIS in the **Federal Register** on November 12, 2004 (69 FR 65427), starting a public comment period ending February 18, 2005.

DOE invites the public to comment on the draft EIS and will consider the comments in preparing the final EIS. Written comments must be submitted by February 18, 2005, to ensure consideration. DOE will consider comments submitted after this date to the extent practicable. DOE will conduct four public hearings to present information and receive comments on the draft in Moab, Blanding, White Mesa, and Green River, Utah. DOE will also publish information about the hearings in local Utah newspapers in advance of the hearings. DOE will accept oral and written comments at the public hearings.

DATES: DOE invites comments on the draft EIS, which should be submitted to Don Metzler (*see* **ADDRESSES**) by February 18, 2005. DOE will consider comments submitted after that date to the extent practicable. DOE also will conduct four public hearings to present information and receive oral and written comments on the draft EIS. Information about these hearings will also be published in local Utah newspapers in advance of the hearings. The locations, dates, and times for these public hearings are as follows:

1. January 25, 2005, 6 p.m., City Hall Meeting Room, 240 E. Main, Green River, Utah.
2. January 26, 2005, 6 p.m., Archway Inn, 1551 N. Hwy 191, Moab, Utah.
3. January 27, 2005, 10 a.m., Education Building, White Mesa, Utah.
4. January 27, 2005, 6 p.m., College of Eastern Utah Arts and Events Center Auditorium, 639 West 100 South, Blanding, Utah.

ADDRESSES: Requests for further information on the draft EIS, copies of the document, and comments on the draft EIS should be directed to Don Metzler, Moab Federal Project Director, U.S. Department of Energy, 2597 B¾ Road, Grand Junction, Colorado, 81503; facsimile: (970) 248–7636; telephone (970) 248–7612 or toll free at (800) 637–4575; or e-mailed to: *moabcomments@gjo.doe.gov*. Additional information can also be obtained from the EIS Web site: *http://www.gj.em.doe.gov/moab/*. For information or instructions on how to record comments call (800) 637–4575.

FOR FURTHER INFORMATION CONTACT: For general information on the Office of Environmental Management's (EM) NEPA process, please contact Mr. Don Metzler, Moab Federal Project Director, at the address or phone numbers listed above, or Steven A. Frank, Office of Environmental Management NEPA Compliance Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–7478.

For information regarding the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Alternatives Considered

Remediation alternatives for the disposal of surface contamination include on-site disposal of the mill tailings at their current location in Moab, Utah; and three off-site disposal alternatives in Utah: Klondike Flats, near Moab; Crescent Junction, near the town of Crescent Junction and about 20 miles east of the town of Green River; and the White Mesa Mill within a few miles of the towns of Blanding and White Mesa and the Ute Mountain Ute Indian Reservation. The draft EIS considers three modes of transporting the mill tailings to the off-site alternatives: truck, rail, and slurry pipeline. In addition, the draft EIS evaluates active ground water remediation to eliminate the potential ongoing impacts to aquatic species in the Colorado River resulting from the discharge of contaminated ground water into the river.

In accordance with NEPA requirements, the draft EIS also analyzes, for comparative purposes, a No Action alternative. Under the No Action alternative, DOE would cease the active management that DOE currently provides of the mill tailings currently stored on-site. Discharge of contaminated ground water into the Colorado River would continue under the No Action alternative.

DOE has not yet identified a preferred alternative. DOE will consider the analyses provided in the EIS as well as comments on the document in determining its preferred alternative, which will be identified in the final EIS.

Distribution and Availability of the Draft EIS

Copies of the draft EIS were distributed to Members of Congress, Federal, State, and Indian tribal governments, local officials, persons, agencies, and organizations who have expressed an interest in the EIS process. Copies of the draft EIS may also be requested as indicated previously in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice. The draft EIS is available electronically on the Internet at *http://www.gj.em.doe.gov/moab/,* and is also available on the DOE NEPA Web site at *http://www.eh.doe.gov/nepa/.* Copies of the draft EIS have been placed in the Grand County Public Library, Blanding Branch Library, and the White Mesa Ute Administrative Building, and in the DOE Public Reading Room in Grand Junction, Colorado. Copies may also be requested by contacting DOE toll free at 1–800–637–4575.

Addresses of Public Reading Rooms and Libraries:

Grand County Library, 25 South 100 East, Moab, Utah, (435) 259–5421. Library hours: 9 a.m. to 9 p.m. Monday through Friday, 10 a.m. to 6 p.m. Saturday, Closed Sunday.

Blanding Branch Library, 25 West 300 South, Blanding, Utah, (435) 678–2335. Library hours: Noon to 7 p.m. Monday through Thursday, 2 to 6 p.m. Friday, 10 a.m. to 2 p.m. Saturday.

White Mesa Ute Administrative Building (off U.S. Highway 191), White Mesa, Utah, (435) 678–3397.

Reading Room hours: 8 a.m. to 4:30 p.m. Monday through Friday, Closed weekends.

The DOE Freedom of Information Act Office and Reading Room, Room 1E–190, 1000 Independence Ave, SW., Washington, DC 20585, (202) 586–3142.

Public Hearings: DOE will conduct four public hearings on the draft EIS (*see* **DATES** above).

Issued in Washington, DC, on November 30, 2004.

Dr. Inés Triay,

Deputy Chief Operating Officer.

[FR Doc. 04–26627 Filed 12–2–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6658–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5073 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed November 22, 2004 Through November 26, 2004 Pursuant to 40 CFR 1506.9.

EIS No. 040543, Final EIS, FHW, MI, MI–59 Livingston County Widening Project between I–96 and US 23, Recommended Alternative was Selected, Right-of-Way Preservation Center Corridor, Funding, NPDES and U.S. Army COE Section 404 Permits Issuance, Livingston County, MI, Wait Period Ends: January 3, 2005, Contact: Abdelmoez Abda lla (517) 702–1820.

EIS No. 040544, Draft Supplement, FHW, UT, Legacy Parkway Project, Construction from I–215 at 2100 North in Salt Lake City to I–15 and US 89 near Farmington, Updated Information, Funding and U.S. Army COE Section 404 Permit, Salt Lake and Davis Counties, UT, Comment Period Ends: February 1, 2005, Contact: Gregory Punske (801) 963–0182.

EIS No. 040545, Draft EIS, AFS, PA, Martin Run Project, To Implement Management Direction as Outlined in Allegheny National Forest Plan, Bradford Ranger District, Allegheny National Forest, Warren and McKean Counties, PA, Comment Period Ends: January 18, 2005, Contact: Heather Luczak (814) 362–4613.

EIS No. 040546, Draft EIS, NPS, AZ, Chiricahua National Monument Fire Management Plan (FMP), Implementation, AZ, Comment Period Ends: February 2, 2005, Contact: Alan Whaton (520) 824–3560.

EIS No. 040547, Draft EIS, IBR, CA, Folsom Dam Road Access Restriction Project, Control Access to Folsom Dam, City of Folsom, CA, Comment Period Ends: January 18, 2005, Contact: Robert Schroeder (916) 989–7274.

EIS No. 040549, Draft EIS, BLM, CO, Roan Plateau Resource Management Plan Amendment, Including Former Naval Oil Shale Reserves 1 and 2, Garfield and Rio Blanco Counties, CO, Comment Period Ends: March 4, 2005, Contact: Steve Bennett (970) 947–2800.

EIS No. 040549, Draft EIS, FHW, MD, Intercounty Connector (ICC) from I–270 to US 1, Funding and U.S. Army COE 404 Section Permit, Montgomery and Prince George's Counties, MD, Comment Period Ends: February 1, 2005, Contact: Nelson J. Castellanos (410) 962–4440.

EIS No. 040550, Draft EIS, COE, NY, Hudson River at Athens, New York Navigation Project, Design and Construction of a Spur Navigation Channel, Hudson River, New York City, NY, Comment Period Ends: January 18, 2005, Contact: Bonnie Hulkower (202) 264–5798.

EIS No. 040551, Draft EIS, FHW, WI, WI–23 Highway Project, Transportation Improve between Fond du Lac and Plymouth, Funding, Fond du Lac and Sheboygan Counties, WI, Comment Period Ends: January 21, 2005, Contact: Johnny Gerbitz (608) 829–7500.

EIS No. 40452, Final EIS, CGD, LA, Gulf Landing Deepwater Port License Application for Construct of a Deepwater Port and Associated Anchorages in the Gulf of Mexico, South of Cameron, LA, Wait Period Ends: January 3, 2005, Contact: Mark A. Prescott (202) 267–0225.

Amended Notices

EIS No. 404529, Draft EIS, COE, MA, Cape Wind Energy Project Construct and Operate 130 Wind Turbine

Generators on Horseshoe Shoal in Nantucket Sound, MA, Comment Period Ends: February 24, 2005, Contact: Karen Adams (978) 318–8338.

Revision of FR Notice Published on 11/19/04: CEQ Comment Period Ending 1/18/2005 has been Extended to 2/24/2005.

Dated: November 30, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–26629 Filed 12–2–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6658–3]

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 FR dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–J65426–UT Rating EC2, Wasatch Plateau Grazing Project, Proposal To Continue To Authorize Sheep Grazing by Issuance of a Term Grazing Permits on 31 Sheep Allotments, Manti-La Sal National Forest, Sanpete, Ferron and Price Ranger Districts, Sanpete, Carbon, Utah and Emery Counties, UT.

Summary: EPA expressed environmental concerns about whether the preferred alternative would resolve the existing adverse impacts from grazing to aquatic and terrestrial resources, and suggested enhancements to the analysis of impacts, the adaptive management plan and the range of alternatives.

ERP No. D–COE–K36141–AZ Rating LO, Santa Cruz River Paseco de las Iglesias Feasibility Study, To Identify, Define and Solve Environmental Degradation, Flooding and Water Resource Problem, City of Tucson, Pima County, AZ.

Summary: EPA does not object to the project as proposed, but requested additional information regarding coordination with Tribes and cumulative impacts.

ERP No. D–NRC–G09804–NM Rating LO, National Enrichment Facility (NEF), To Construct, Operate, and Decommission a Gas Centrifuge Uranium Enrichment Facility, License Application, NUREG–1790, near Eunice, Lea County, NM.

Summary: EPA has no objection to the proposed action.

ERP No. D–NRS–L39060–OR Rating LO, Williamson River Delta Restoration Project, To Restore and Maintain the Ecological Functions of the Delta, Williamson River, Klamath County, OR.

Summary: EPA commended NRCS for their efforts to restore ecological function and ecosystem health in the Williamson River Delta. The water quality benefits of the project are consistent with both the Clean Water Act Total Maximum Daily Load (TMDL) for the Upper Klamath Lake Basin (May 2002) and the Water Quality Management Plan for implementation of the TMDL. EPA had no objections to the proposed project.

ERP No. D–UAF–G11045–TX Rating LO, Relocation of the C–5 Formal Training Unit from Altus Air Force Base, Oklahoma to Lackland Air Force Base, Bexar County, TX.

Summary: EPA has lack of objection to the selection of the proposed alternative. Mitigation measures have been incorporated in the selected alternative to effectively minimize and/or alleviate adverse environmental impacts.

Final EISs

ERP No. F–AFS–J65408–MT, Fortine Project, To Implement Vegetation Management, Timber Harvest and Fuel Reduction Activities, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT.

Summary: EPA supports the BMPs and road improvements and decommissioning projects that provide overall water quality improvement for 303(d) listed Fortine Creek. However, EPA is concerned about sediment production and transport from proposed timber harvests, and the availability of funds for additional aquatic and riparian enhancement projects.

ERP No. F–COE–K39086–CA, Matilija Dam Ecosystem Restoration Feasibility Study, Restoring Anadromous Fish Populations, Matilija Creek, Ventura River, Ventura County Watershed Protection District, Ventura County, CA.

Summary: The FEIS addressed EPA's concerns regarding downstream ecosystem impacts from sediment mobilization.

Dated: November 30, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–26630 Filed 12–2–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 04–3624]

Conference Call Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 30, 2004, the Commission released a public notice announcing the December 10, 2004 conference call meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's conference call meeting and agenda. This notice of the December 10, 2004, NANC conference call meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to the NANC's need to discuss a time sensitive issue before the next scheduled meeting. This statement complies with the General Services Administration Management regulations implementing the Federal Advisory Committee Act. *See* 41 CFR Section 101–6.1015(b)(2).

DATES: Friday, December 10, 2004, 2 p.m. e.s.t.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: November 30, 2004.

The North American Numbering Council (NANC) has scheduled a meeting to be held by conference call on Friday, December 10, 2004, from 2 p.m. e.s.t until 3 p.m. e.s.t. The conference bridge number for domestic participants is (800) 377–4562 (toll free). The call in number for international participants is (816) 650–0777 (caller pays). The

Chairperson for the call is Robert Atkinson. This meeting is open to members of the general public. Due to limited port space, NANC members and Commission staff will have first priority on the call. The FCC will attempt to accommodate as many participants as possible. Members of the public may join the call as remaining port space permits, or may attend in person at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room 6–B516, Washington, DC 20554. The public may submit written statements to the NANC, which must be received one business day before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received one business day before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Friday, December 10, 2004, 2 p.m. EST

1. To discuss the NANC Report and Recommendation to the Federal Communications Commission regarding the SMS/800 Number Administration Committee (SNAC) Guidelines.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 04–26639 Filed 12–2–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 04–3625]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 30, 2004, the Commission released a public notice announcing the January 19, 2005 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Wednesday, January 19, 2005, 9:30 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: November 30, 2004.

The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday, January 19, 2005, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Wednesday, January 19, 2005, 9:30 a.m.*

1. Announcements and Recent News
2. Approval of Minutes
   —Meeting of November 4, 2004
3. Report from NANP B&C Agent
4. Report of NAPM, LLC
5. Report of the North American Numbering Plan Administrator (NANPA)
6. Report of National Thousands Block Pooling Administrator
7. Status of Industry Numbering Committee (INC) activities
8. Reports from Issues Management Groups (IMGs)
   —Safety Valve IMG
   —SMS/800 Number Administration Committee (SNAC) Guidelines IMG
9. Report of Local Number Portability Administration (LNPA) Working Group
10. Report of Numbering Oversight Working Group (NOWG)
11. Report of the Billing & Collection Oversight Working Group (B&CWG)
12. Report of Future of Numbering Working Group
13. Special Presentations
14. Update List of NANC Accomplishments
15. Summary of Action Items
16. Public Comments and Participation (5 minutes per speaker)
17. Other Business

Adjourn no later than 5 p.m.

Next Meeting: Tuesday, March 15, 2005.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 04–26642 Filed 12–2–04; 8:45 am]

BILLING CODE 6712–01–P

* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov.*

Final approval under OMB delegated authority of the extension for three

years, with revision, of the following report:

Report title: Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB control number: 7100–0286.

Frequency: Semiannual.

Reporters: Large U.S. dealers of over-the-counter (OTC) derivatives.

Annual reporting hours: 2,400 hours.

Estimated average hours per response: 150 hours. Some reporters, because of their organizational structure, have significantly higher burden than the Federal Reserve's estimate. The Federal Reserve will consult with respondents to update the burden estimates and will file an amendment with OMB upon completion.

Number of respondents: 8.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2) and 353–359) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This voluntary report collects derivatives market statistics from eight large U.S. dealers of OTC derivatives. Data are collected on notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity- and commodity-linked OTC derivatives contracts across a range of underlying currencies, interest rates, and equity markets.

This collection of information complements the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. The Federal Reserve conducts both surveys in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements, which publishes global market statistics that are aggregations of national data.

Current Actions: The Federal Reserve proposed to revise the FR 2436 by adding a table (with four sections) to collect data on credit default swaps (CDS). Given the very rapid growth of credit derivatives in recent years, the G–10 central banks determined that data on credit default swaps should be collected semiannually.

The original proposal called for collection of data on the outstanding positions (notional, gross positive and gross negative market values) of credit default swap contracts for protection bought and protection sold by instrument type and counterparty type. Instrument types would be disaggregated into single-name and multiple-name instruments. Counterparty types would be disaggregated into reporting dealers, other financial institutions, and nonfinancial customers. In addition, other financial institutions would be further disaggregated into: banks and securities firms; insurance, reinsurance, and financial guaranty firms; special purpose entities (SPEs); hedge funds; and other. Notional values would be further disaggregated by the credit rating of the underlying reference entity, by the sector of the underlying reference entity, and by the remaining maturity of outstanding credit default swap contracts.

The Federal Reserve received one comment letter from a banking trade association. The commenter expressed strong opposition to the proposal, arguing that revisions to the voluntary FR 2436 would further tax members banks' resources, recommending the due date be changed to 90 days after the report date from the current 60 days, and opposing the collection of credit derivative data.

Detailed Discussion of the Comments

Collection of Credit Derivative Data

The commenter noted that Schedules HC–L and HC–R of the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128) already collect credit derivative information for protection bought and sold on notional values and counterparty ratings (investment grade versus below investment grade), as well as gross positive and negative fair values. Therefore, the commenter recommended that credit derivative data be included on the FR 2436 in Tables 3A–3C, ''Equity and Commodity-Linked Contracts,'' to obtain the regional detail. The Federal Reserve proposes to reduce the amount of detail to be collected under the proposal, but not to the extent recommended by the commenter. The purpose of the FR 2436 is to understand the size and scope of global over-the-counter (OTC) derivatives markets, which is why the report collects detail on derivatives counterparties (reporting dealers, other financial institutions, and nonfinancial customers), as well as on market risk factors (such as currencies for interest rate and foreign exchange contracts) that are not collected on the FR Y–9C. Moreover, the Federal Reserve and other central banks have a particular interest in credit and credit risk and how they are intermediated in the global financial system, which is why relatively more detail is being requested on credit derivatives as compared to other derivatives markets of comparable size.

The commenter indicated that it would be very burdensome for respondents to report detailed data on the sector of the counterparty. This information is not used in respondents' risk management systems and would have to be coded manually for each counterparty. In response, the Federal Reserve proposes to reduce the number of counterparty categories to five: (1) Reporting dealers; other financial institutions, broken into (2) banks and securities firms, (3) insurance firms, and (4) other; and (5) nonfinancial customers. Although the Federal Reserve was interested in seeing a breakout of the amount of business done with hedge funds and SPEs, these counterparties will be included in (4) other. This item will provide an upper bound on contracts with hedge funds and SPEs, at much less burden to reporters.

The commenter also stated that data on reference entities would be very burdensome to report because such data are also not kept in the respondents' risk management systems. The commenter emphasized that reference entity information was especially burdensome for multiple-name instruments. In response, the Federal Reserve proposes to drop reporting of reference entity information by sector and rating category for multiple-name instruments, as the burden associated with such data are not likely to match its usefulness. Moreover, the Federal Reserve is concerned that the quality of data for multiple-name instruments might be low, due to the difficulty involved in reporting such data.

Regarding the proposed reference entity sector breakdowns, the commenter explained that breaking corporate reference entities into financial and nonfinancial would be significantly more burdensome than simply splitting out sovereign reference entities. The Federal Reserve viewed splitting out sovereign reference entities to be the most important split for sector of the reference entity and therefore propose to reduce the number of categories for sector of reference entity to two (sovereigns and non-sovereigns).

The commenter also explained that breaking out investment-grade of reference entities into AA and above, and A and below would be significantly more burdensome than just reporting investment grade, below investment grade, and unrated. The Federal Reserve viewed below investment grade and unrated as the most important rating categories to identify and therefore propose to reduce the number of

categories for the rating of the reference entity to three (investment grade, below investment grade, and not rated).

The commenter stated that a bank's credit risk on a credit derivative contract is to the counterparty and not to the reference entity (or underlying obligor), and that therefore, information on the reference entity may be misleading. However, this assertion is only true for protection purchased via credit default swaps. For protection sold via credit default swaps, a bank is, indeed, exposed to the credit risk of the underlying reference entity. In any case, as noted above, the purpose of this report is to understand the size and scope of global OTC derivatives markets, not individual banks' credit exposures from credit derivatives contracts.

The commenter also stated that many credit derivative transactions are entered into as a hedge on a bank's loans and securities portfolios, but because the FR 2436 would not capture data on the loans or securities that are being hedged, the information reported may be misleading. However, as noted above, the purpose of this report is to understand the size and scope of global OTC derivatives markets, not individual banks' credit exposures from credit derivatives contracts.

Opt-Out of Filing the Report

The commenter requested that the Federal Reserve consider giving banks a procedure to opt-out of filing the report or opt-out of filing individual schedules because the FR 2436 is a voluntary and statistical report and is not necessary for supervisory purposes. The report is collected from only the eight largest derivatives dealers (four banks and four investment banks) that are headquartered in the United States. The Federal Reserve feels the usefulness of the data would be substantially reduced if any of these reporters were to opt out of filing the report or a schedule from the report and therefore request that respondents submit all schedules of the FR 2436. As demonstrated in the responses to the commenter's other suggestions, the Federal Reserve is taking several steps to reduce the burden of supplying these data. In addition, Federal Reserve staff will work with individual respondents, as needed, to make the process of providing this valuable information as smooth as possible, including extending the filing deadline in order to give them more time to address the revisions.

Effective Date

The commenter stated it would be very difficult for respondents to implement for the December 2004 report date, as originally proposed, because compiling the data are burdensome and because they must address revisions to a number of other reporting forms. The commenter requested an additional year to implement the proposal. In response, the Federal Reserve proposes to phase-in the revisions, collecting more basic data for the December 2004 and June 2005 report dates (phase 1) and collecting the remaining data (phase 2) as of December 2005. The basic data would include notional values for contracts bought and sold and gross positive and negative market values, for single-name and multi-name instruments, for three counterparty categories (reporting dealers, other financial institutions, and nonfinancial customers), and the notional value of contracts for three different maturity splits. The basic data would not include any detail on reference entities.

Filing Deadline

The commenter stated that the 60-day filing period has become increasingly burdensome for respondents because the filing period has been shortened for a number of supervisory reports. Also, the commenter noted that the data collection process is still manual at most institutions. The commenter asked for 90 days to file the report. In response, the Federal Reserve proposes to extend to 75 days, from 60 days, the report submission date.

Board of Governors of the Federal Reserve System, November 29, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–26610 Filed 12–2–04; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Citizens Bancshares, Inc., ESOP, Edmond, Oklahoma; to acquire up to 40 percent of the voting shares of Citizens Bancshares, Inc., Edmond, Oklahoma, and thereby indirectly acquire voting shares of The Citizens Bank of Edmond, Edmond, Oklahoma.

Board of Governors of the Federal Reserve System, November 29, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26625 Filed 12–2–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–048X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202)

395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Evaluation of James A. Ferguson Emerging Infectious Diseases Fellowship Program—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

CDC is particularly concerned with the racial, ethnic, and gender health disparities in the distribution of infectious diseases in the U.S. To help address the health and well-being of minority and underserved populations, CDC endeavors to train a racially and ethnically diverse public health workforce. Since 1989, the James A. Ferguson Emerging Infectious Disease Summer Fellowship Program, which is administered by the Minority Health Professions Foundation (MHPF), has been providing an eight-week program of educational and experiential opportunities for racial and ethnic minority medical, dental, pharmacy, veterinary, and public health graduate students. The Fellows are given opportunities to explore the wide range of public health career options available to them once their formal training is completed. As of summer 2003, 311 Fellows have completed the program.

The purpose of this study is to conduct a multi-facet evaluation of the Ferguson Fellowship Program. The data from this study will be used to develop planning and decision making initiatives regarding expansion and funding. The study aims to evaluate and measure the success of the program for the dual purposes of program expansion and encouraging other organizations to implement similar mechanisms to increase the presence of racial and ethnic minorities in public health. Data for this study will be collected from relevant documents, telephone interviews with key stakeholders, and a mail survey of Ferguson Fellows.

CDC proposes to conduct the study to (1) examine the views and perspectives of the constituents and their experiences with the Ferguson Fellowship Program and (2) assess the impact of the program on strengthening and diversifying the workforce and addressing racial and ethnic health disparities in the field of Public Health. To minimize respondent burden, the mail survey questionnaire will be carefully developed so that questions are relevant and succinct.

The information obtained from this project will enable CDC to make important decisions regarding the program's future expansion and funding. Responses are voluntary. No proprietary items or questions of a sensitive nature will be collected. There are no costs to respondents other than their time. The annualized burden is estimated to be 156 hours.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Survey	311	1	30/60

Dated: November 26, 2004.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–26655 Filed 12–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–04KB]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project:

Evaluation of a Concussion Tool Kit—Heads Up: Concussion in High School Sports—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

It is estimated that 300,000 sports-related traumatic brain injuries of mild to moderate severity, most of which can be classified as concussions, occur each year in the United States. While the proportion of these injuries that are repeat occurrences is unknown, there is an increased risk of subsequent concussion among persons who have had at least one previous concussion. Repeated concussions occurring over an extended period can result in cumulative neurological and cognitive problems. Repeated concussions occurring within a short period of time (second impact syndrome) can be catastrophic or fatal.

One of the goals of CDC is to reduce negative outcomes resulting from sports-related concussions and reduce the occurrence of second-impact syndrome in high schools. To help achieve these goals, CDC's National Center for Injury Prevention and Control (NCIPC) will undertake a communication and education effort in the form of a concussion tool kit aimed at high school coaches. The objectives of the tool kit include providing coaches with materials and tools that will help them to: (1) Raise their own awareness about sports-related concussions; (2) prevent sports-related concussions; (3) take appropriate action when injury occurs; and (4) educate athletes, parents, and school officials about sports-related concussions. After the tool kit has been reviewed, NCIPC will conduct a telephone survey to assess short-term impact of the communication and educational initiative directed at high school athletic coaches about sports-related concussions.

Specifically, the survey will assess knowledge and awareness about sports-related concussions, appropriateness of content, perceived value, intentions to use, and actual use of tool kit materials. Survey results will be used to identify revisions and improvements that need to be made to the tool kit materials before they are promoted and distributed nationally in 2005. This one-time survey will be conducted over a two-to three-month period. There are no costs to the respondents except for their time to participate. The annualized burden is estimated to be 301 hours.

Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
Screener Form	2,800	1	2/60
Survey Instrument	1,245	1	10/60

Dated: November 26, 2004.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–26656 Filed 12–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05AM]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–498–1210 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Program of Cancer Registries Annual Program Evaluation Instrument (NPCR–APEI)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and brief description of the proposed project:

CDC is responsible for administering and monitoring the National Program of Cancer Registries (NPCR). As of 1999, CDC supported 45 states, 3 territories, and the District of Columbia for population-based cancer registries. (The 5 remaining states receive federal funding for the operations of cancer registries through the National Cancer Institute.)

The NPCR Annual Program Evaluation Instrument (NPCR-APEI) is needed in order to receive, process, evaluate, aggregate and disseminate NPCR program information. Data collected using this instrument will be used by the NPCR to evaluate various attributes of the registries funded by NPCR, monitor NPCR registries' progress towards program standards, goals, and objectives, and respond to data inquiries made by CDC and other agencies of the federal government. Some data for this instrument is pre-loaded, thus minimizing the burden on respondents. There are no costs to respondents except their time to participate in the survey.

Annualized Burden Table:

Respondents	Number of respondents	Number of responses per respondent	Average burden per responses (in hours)	Total burden in hours
NPCR Grantees	49	1	1.5	73.5
Total				73.5

Dated: November 26, 2004.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–26657 Filed 12–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05AI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–498–1210 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The Minority HIV/AIDS Research Initiative: Gay and Non-gay Black and Latino Men Who Have Sex with Men—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background

CDC is requesting a two year approval from the Office of Management and Budget (OMB) to administer an epidemiological survey on the internet. As part of the Minority HIV/AIDS Research Initiative (MARI), CDC is funding an internet study that examines behaviors of gay and non-gay Black and Latino men who have sex with men. The objectives of the study are threefold: (1) To determine if Black and Latino men who have sex with men (MSM) who use the internet to meet sexual partners report greater HIV-related sexual and drug risks than those who do not; (2) to identify respondents' non-internet sex-seeking behaviors; and (3) to explore to what degree Black and Latino MSM with internet access view this medium as a potential tool for HIV prevention.

African American and Latino men, especially those men who have sex with men, continue to be an extremely vulnerable population affected by high rates of HIV/AIDS. The impact of HIV/AIDS on African American and Latino communities has been devastatingly disproportionate as compared to European American populations. Through December 2001, CDC reported that while African Americans represented only 12% of the total U.S. population, they accounted for almost 38% of all of the AIDS cases in this country. Similarly, the Latino population represented 13% of the total U.S. population, but accounted for 19% of the total number of new AIDS cases. For all men, the exposure category of ''men who have sex with men'' represented the largest transmission route for HIV infection.

While existing studies show that Black and Latino MSM may be at greater risk for contracting and transmitting HIV/AIDS to partners, CDC knows little about Black and Latino MSM using the internet and/or potential avenues for HIV prevention with this population since most of the studies conducted thus far have been with White MSM samples. Data gathered from this study will guide CDC development of risk reduction programs for this high-risk population.

A convenience sample of 500 Black (African American, African-Latin, African-Caribbean, African, Mixed race) and 500 Latino (Caribbean, Central or South American ancestry) MSM will be asked to respond to a one-time survey of attitudes, knowledge and behavior related to internet sex seeking behavior and HIV/STD (sexually transmitted disease) transmission. This survey will take approximately 30 minutes to complete and will include questions on the following topics: demographics (*i.e.*, age, education, income, HIV status, *etc.*); sexual identity; racial/ethnic identity; homophobia; HIV/AIDS knowledge, attitudes, behavior; perceived HIV/AIDS susceptibility; STD history; characteristics of sexual partners and perceived HIV/AIDS susceptibility of sexual partners; risk behavior specific to online versus traditional venues; use of screen names and cruising sites; sexual compulsivity; substance use; time spent online and time spent sex seeking. The only cost to respondents will be their time to complete the survey. The estimated annualizdd burden is 500 hours.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden response/hours (in hours)	Total burden hours
Black Men	500	1	30/60	250
Latino Men	500	1	30/60	250
Total	1000			500

Dated: November 29, 2004.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–26659 Filed 12–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–249, CMS–2088, CMS–R–48 and CMS–382]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), 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.

1. *Type of Information Collection Request:* Extension of currently approved collection.

Title of Information Collection: Hospice Cost Report and Supporting Regulations Contained in 42 CFR 413.20 and 413.24.

Use: The hospice cost report is the mechanism used to collect data from providers for rate evaluations for the Prospective Payment System (PPS). Once CMS obtains this information, we will update the PPS as mandated by Congress.

Form Number: CMS–R–249 (OMB#: 0938–0758).

Frequency: Annually.

Affected Public: Not-for-profit Institutions and Business or other for-profit.

Number of Respondents: 1,720.

Total Annual Responses: 1,720.

Total Annual Hours: 302,720.

2. *Type of Information Collection Request:* Extension of currently approved collection.

Title of Information Collection: Outpatient Rehabilitation Cost Report and Supporting Regulations Contained in 42 CFR 413.20 and 413.24.

Use: This form is used by community mental health centers to report their health care costs to determine the amount of reimbursement for services furnished to Medicare beneficiaries.

Form Number: CMS–2088–92 (OMB#: 0938–0037).

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for profit Institutions, State, Local or Tribal governments.

Number of Respondents: 618.

Total Annual Responses: 618.

Total Annual Hours: 61,800.

3. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Hospital Conditions of Participation (COP) and Supporting Regulations in 42 CFR 482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 485.618 and 485.631.

Use: Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42 CFR Part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals and critical access hospitals (CAHs).

Form Number: CMS–R–48 (OMB# 0938–0328).

Frequency: Annually.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Gov.

Number of Respondents: 6,085.

Total Annual Responses: 6,085.

Total Annual Hours: 5,511,544.

4. *Type of Information Collection Request:* Revision of currently approved collection.

Title of Information Collection: ESRD Beneficiary Selection and Supporting Regulations Contained in 42 CFR 414.330.

Use: ESRD facilities have each new home dialysis patient select one of two methods to handle Medicare reimbursement. The intermediaries pay for the beneficiaries selecting Method I and the carriers pay for the beneficiaries selecting Method II. This system was developed to avoid duplicate billing by both intermediaries and carriers.

Form Number: CMS–382 (OMB#: 0938–0372).

Frequency: Other: One time only.

Affected Public: Individuals or Households, Business or other for-profit, and Not-for profit Institutions.

Number of Respondents: 7,400.

Total Annual Responses: 7,400.

Total Annual Hours: 617.

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. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 18, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–26286 Filed 12–2–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0114]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Protection of Human Subjects; Recordkeeping Requirements for Institutional Review Boards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Protection of Human Subjects; Recordkeeping Requirements for Institutional Review Boards'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 2004, (69 FR 43852) the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0130. The approval expires on November 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: November 26, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26581 Filed 12–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Adoptive Immunotherapy With Enhanced T–Lymphocyte Survival

Richard Morgan (NCI) and Steven Rosenberg (NCI)

U.S. Provisional Patent Application No. 60/617,340 filed 08 Oct 2004 (DHHS Reference No E–340–2004/0–US–01) and U.S. Provisional Patent Application filed 12 Oct 2004 (DHHS Reference No E–340–2004/1–US–01)

Licensing Contact: Jeff Walenta; (301) 435–4633; *walentaj@mail.nih.gov.*

Adoptive immunotherapy strategies have existed for several years now and many have proven to be highly successful in a limited subset of patients. This limited response rate among a diverse patient population may not be surprising, given the complexity of the immune system and the complicated evolution of a normal cell to a immune evading malignancy. A common observation amongst most patients that did not respond to adoptive therapy strategies is that the immune response to the cancer was not sustained.

A number of cytokines have been shown to sustain a T-cell response when administered systemically with autologous isolated T-cells. However, the systemic delivery of many cytokines, such as IL–2, will cause significant toxicity before the beneficial immunologic effects of the autologous T-cells can occur. This invention describes a method of transfecting isolated autologous T-Lymphocytes with endogenous cytokines, for example IL–7 and IL–15, to sustain an adoptive T-lymphocyte response without systemic toxicity. The invention also describes a method for improving expression of transfected cytokines via a codon optimized IL–15 vector.

This invention was developed at the NCI Surgery Branch. The Surgery Branch plans to initiate clinical studies utilizing this technology and collaborative opportunities may be available. Publications which may provide background information for this technology include:

1. Rosenberg, SA and Dudley, ME. Cancer regression in patients with metastatic melanoma after the transfer of autologous antitumor lymphocytes. Proc Natl Acad Sci U S A. 2004 Oct 5;101 Suppl 2:14639–45. Epub 2004 Sep 20.

2. Klebanoff CA, Finkelstein SE, Surman DR, Lichtman MK, Gattinoni L, Theoret MR, Grewal N, Spiess PJ, Antony PA, Palmer DC, Tagaya Y, Rosenberg SA, Waldmann TA, Restifo NP. IL–15 enhances the in vivo antitumor activity of tumor-reactive CD8+ T cells. Proc Natl Acad Sci U S A. 2004 Feb 17;101(7):1969–74. Epub 2004 Feb 04.

3. Dudley ME, Rosenberg SA. Adoptive-cell-transfer therapy for the treatment of patients with cancer. Nat Rev Cancer. 2003 Sep;3(9):666–75. Review.

4. Liu K, Rosenberg SA. Interleukin-2-independent proliferation of human melanoma-reactive T lymphocytes transduced with an exogenous IL–2 gene is stimulation dependent. J Immunother. 2003 May–Jun;26(3):190–201.

5. Liu K, Rosenberg SA. Transduction of an IL–2 gene into human melanoma-reactive lymphocytes results in their continued growth in the absence of exogenous IL–2 and maintenance of specific antitumor activity. J Immunol. 2001 Dec 1;167(11):6356–65.

A New Approach Toward Macrocyclization of Peptides

Terrence R. Burke, Jr. *et al.* (NCI)

DHHS Reference No. E–327–2004/0–US–01

Licensing Contact: George Pipia; (301) 435–5560; *pipiag@mail.nih.gov*

The invention relates to cyclic peptides for use as inhibitors of oncogenic signal transduction for cancer therapy. The current invention discloses novel cyclic peptides resulting from ring closure between the alpha and beta positions of C-terminal and N-terminal residues, respectively. This allows retention of key functionality needed for binding to target proteins, which results in increased affinity.

Cyclic peptides that retain key chemical functionality may be of particular importance in inhibiting oncogenic signaling cascades for therapeutic benefit. In many oncogenic signal transduction cascades, tyrosine protein kinases phosphorylated target proteins. Propagation of the signal is achieved when these phosphorylated tyrosyl residues are bound by proteins bearing SH2 domains. Cyclic peptides that disrupt the interaction between proteins with SH2 domains and proteins with phosphorylated tyrosyl residues could block oncogenic signals and serve as powerful cancer therapeutic agents. As several moieties are required for optimal recognition by SH2 domains, the cyclic peptides of the current invention could be more effective inhibitors of SH2 domain proteins, or of other proteins where increased specificity is desired. The inventors have determined that the peptides of the current invention bind to the Grb2–SH2 domain with high affinity, supporting their potential use as therapeutic agents. The current invention is related to U.S. Provisional Application No. 60/504,241; DHHS Reference No. E–315–2003/0–US–01.

cDNA for Murine PEDF

IR Rodriguez, GJ Chader, VK Singh (NEI)

DHHS Reference No. E–112–2004/0—Research Tool

Licensing Contact: Susan Rucker; (301) 435–4478; *ruckersu@mail.nih.gov.*

This technology is a cDNA, obtained from mouse liver, which encodes the open reading frame of the murine homolog of pigment epithelium-derived factor (mPEDF). PEDF is a serpin protein that has not been demonstrated to have serine protease activity in a physiological setting but which exhibits diverse biologic properties including neurotrophic activity and anti-angiogenic activity. The mPEDF cDNA may be used to study PEDF function and may be particularly useful in research applications comparing mPEDF to hPEDF. The cDNA, provided as a plasmid designated pMOU12A, can be readily inserted into an expression vector. The cDNA is further described in Singh, VK *et al.* Mol Vision 4: 7 (April 20, 1998). No patent application has been or will be filed by the NIH for this technology. The cDNA is available through a biological materials license agreement.

Novel Compounds That Release Both Nitric Oxide (NO) and Nitroxyl (HNO) as Pharmacological Agents

Larry Keefer *et al.* (NCI)

U.S. Provisional Application No. 60/540,368 filed 30 Jan 2004 (DHHS Reference No. E–095–2004/0–US–01)

Licensing Contact: Norbert Pontzer; (301) 435–5502; *pontzern@mail.nih.gov*

The simple diatomic molecule nitric oxide (NO) is known to play a diverse and complex role in cellular physiology. NCI scientists have previously produced a number of nucleophile/nitric oxide adducts (diazeniumdiolates) that spontaneously dissociate at physiological pH to release nitric oxide by stable first order kinetics. These compounds are finding diverse therapeutic uses as pharmacological agents. Growing evidence suggests that redox related forms of NO such as nitroxyl (HNO) also have a rich pharmacological potential and may complement that of NO. The present invention provides compounds that release both NO and HNO under physiological conditions, compositions comprising those compounds and methods of using the compounds alone and in conjunction with medical devices such as stents to treat disease. Included among the compositions claimed is a glycosylated prodrug derivative that can be cleaved to active form by β–D-glucosidase (J. Am. Chem. Soc. 2004, 126, 12880–12887).

A Method With Increased Yield for Production of Polysaccharide-Protein Conjugate Vaccines Using Hydrazide Chemistry

Che-Hung Robert Lee and Carl Frasch (FDA), U.S. Provisional Application No. 60/493,389 filed 06 Aug 2003 (DHHS Reference No. E–301–2003/0–US–01)

Licensing Contact: Peter Soukas; (301) 435–4646; *soukasp@mail.nih.gov.*

Current methods for synthesis and manufacturing of polysaccharide-protein conjugate vaccines employ conjugation reactions with low efficiency (about twenty percent). This means that up to eighty percent of the added activated polysaccharide (PS) is lost. In addition, inclusion of a chromatographic process for purification of the conjugates from unconjugated PS is required.

The present invention utilizes the characteristic chemical property of hydrazide groups on one reactant to react with aldehyde groups or cyanate esters on the other reactant with an improved conjugate yield of at least sixty percent. With this conjugation efficiency the leftover unconjugated protein and polysaccharide would not need to be removed and thus the purification process of the conjugate product can be limited to diafiltration to remove the by-products of small molecules. The new conjugation reaction can be carried out within one or two days with reactant concentrations between 1 and 25 mg/mL at PS/protein ratios from 1:2 to 3:1, at temperatures between 4 and 40 degrees Centigrade, and in a pH range of 5.5 to 7.4, optimal conditions varying from PS to PS.

Therefore, this invention can reduce the cost of conjugate vaccine manufacture.

Dated: November 24, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–26596 Filed 12–2–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Dendrimer Based MRI Contrast Agents

AGENCY: National Institutes of Health, Public Health Service, DHHS

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in:

E–151–2002 ''Methods for Functional Kidney Imaging Using Dendrimer Conjugate Agents,'' U.S. Patent App. Serial No. 10/229,316 and International Patent Application No. PCT/US02/27297;

E–240–2001 ''Macromolecular Imaging Agents for Liver Imaging,'' U.S. Patent App. Serial No. 10/481,706, International Patent Application No. PCT/US02/20118, European Patent Application 02752092.3;

E–338–2003 ''Method for Imaging the Lymphatic Systems Using Dendrimer-Based Contrast Agents,'' U.S. Patent App. Serial No. 10/756,948;

E–317–2004 ''Synthetic Metal Ion Chelating Amino Acid Suitable for Use in Solid Phase Peptide Synthesis.'' Filed October 4, 2004 (Serial Number to be determined);

to Dendritic NanoTechnologies, Inc., a Delaware corporation having its principle place of business in Mount Pleasant, Michigan. The United States of America is the assignee to the patent rights of the above inventions.

The contemplated exclusive license may be granted in the field of use of MRI imaging contrast agents.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before February 1, 2005 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *shmilovm@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patent applications intended for licensure disclose and/or cover the following:

E–151–2002—Methods for Functional Kidney Imaging Using Dendrimer Conjugate Agents

The invention is a method for functional kidney imaging using small dendrimer-based MRI contrast agents that transiently accumulate in renal tubules. The accumulation enables visualization of renal structure and function, permitting assessment of structural and functional damage to the kidneys. Six small dendrimer-based MRI contrast agents have been synthesized, and their pharmacokinetics, whole body retention and renal MRI images were evaluated in mice. Surprisingly, despite having unequal renal clearance properties, all of the dendrimer agents clearly visualized the renal anatomy and proximal straight tubules of the mice better than Gd-[DTPA]-dimeglumine. Dendrimer conjugate contrast agents prepared from PAMAM–G2D, DAB–G3D and DAB–G2D dendrimers were excreted rapidly and may be acceptable for use in clinical applications.

E–240–2001—Macromolecular Imaging Agents for Liver Imaging

The invention is a macromolecular imaging agent comprising a polyalkylenimine dendrimer conjugated to a metal chelate that has been shown to be an excellent agent for imaging liver micrometastases as small as about 0.3 mm in a magnetic resonance image of the human liver. In a particular embodiment, the imaging agent is a diaminobutane-core polypropylenimine dendrimer having surface amino groups conjugated to gadolinium metal chelates. The invention makes possible the earlier detection of metastatic disease, leading to earlier application of a therapeutic regime and an improved prognosis. Accordingly, the method of

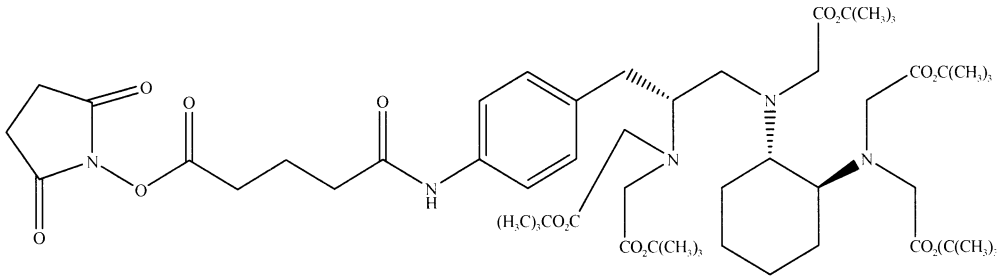
using the imaging agent in the detection of metastatic disease in the liver is also within the scope of the invention.

E–338–2003—Method for Imaging the Lymphatic Systems Using Dendrimer-Based Contrast Agents

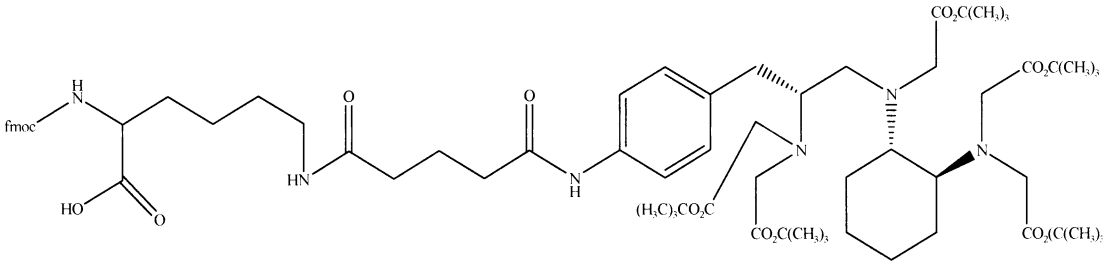
The invention is a 4D method of Magnetic Resonance lymphography using a 240kD contract agent based on generation-6 polyamidoamine dendrimer (G6). The use of the G6 contrast agent greatly enhances visualization of lymphatics and node drainage associated with mammary tumors and further aids in the diagnosis of metastatic breast cancer. After direct injection of the G6 contrast agent into mice, lymphatics and nodes were visualized in both spontaneous (HER2 transgenic mouse) and xenografted (PT–18) breast tumors to metastatic lymph nodes. The conventional clinically approved MRI contract agent, Gd-[DTPA]-dimeglumine (<1kD) was unable (in murine models) to depict lymphatics when used in conjunction with the same imaging system. The invention provides a novel method of using a known contrast agent to visualize lymphatic drainage that has not been previously reported.

E–317–2004—Synthetic Metal Ion Chelating Amino Acid Suitable for Use in Solid Phase Peptide Synthesis

The invention is metal chelators, metal chelator-targeting moiety complexes, metal chelator-targeting moiety-metal conjugates, kits, and methods of preparing them. These chelators are useful in diagnosing and/or treatment of cancer and thrombosis. The metal chelators may be used in conventional synthetic methods to form targeting moieties (*e.g.*, peptides, proteins, and Starburst polyamidoamine dendrimers (PAMAM), capable of conjugating diagnostic and/or therapeutic metals. The formulae for two such chelators is shown below:



I



II

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 24, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–26595 Filed 12–2–04; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH) Notice of Additional Data and Analyses for the Assessment of the Current Validation Status of In Vitro Testing Methods for Identifying Potential Ocular Irritants

Summary

The National Toxicology Program (NTP) Interagency Center for the

Evaluation of Toxicological Methods (NICEATM) recently published a notice in the **Federal Register** (Vol. 69, No. 212, pages 64081–2, November 3, 2004) announcing the availability of and requesting comments on Background Review Documents (BRDs) for four *in vitro* assays proposed for identifying potential ocular corrosives and severe irritants. Notice is hereby given of the availability of additional data and analyses for the Hen's Egg Test-Chorion Allantoic Membrane (HET–CAM) assay. Copies of the additional analyses and any other updates on information relevant to this meeting can be obtained on the ICCVAM/NICEATM Web site at *http://iccvam.niehs.nih.gov* or by contacting NICEATM [NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) (919) 541–3398, (fax) (919) 541–0947, (e-mail) *iccvam@niehs.nih.gov*].

Interested parties are invited to check the ICCVAM/NICEATM Web site periodically for additional information and/or analyses for this meeting.

Dated: November 23, 2004.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–26594 Filed 12–2–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18977]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0024, 1625–0044, and 1625–0045

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 three Information Collection Reports (ICRs)—(1) 1625–0024, Safety Approval of Cargo Containers; (2) 1625–0044, Outer Continental Shelf Activities—Title 33 CFR Subchapter N; and (3) 1625–0045, Adequacy Certification for Reception Facilities and Advance Notice—33 CFR Part 158—abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. These ICRs describe 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 January 3, 2005.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2004–18977] 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 completed 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: Mrs. Bernice Parker-Jones), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2328.

FOR FURTHER INFORMATION CONTACT: Mrs. Bernice Parker-Jones, Office of Information Management, 202–267–2328, for questions on these documents; or 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 participate in 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'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–18977], 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.*

Regulatory History: This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (69 FR 54300, September 8,

2004) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments: The Coast Guard invites comments on the proposed collection 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 Department's 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 (ICR) addressed. Comments to DMS must contain the docket number of this request, USCG–2004–18977 comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Safety Approval of Cargo Containers.

OMB Control Number: 1625–0024.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and manufacturers of containers, and organizations that the Coast Guard delegates to act as an approval authority.

Form: None.

Abstract: This collection of information addresses the reporting and recordkeeping requirements for containers in 49 CFR Parts 450–453. These rules are necessary because the U.S. is signatory to the International Convention for Safe Containers (CSC). The CSC requires that all containers be safety approved before they are used in trade. These rules prescribe only the minimum requirements of the CSC.

Burden Estimates: The estimated burden is 73,272 hours a year.

2. *Title:* Outer Continental Shelf (OCS) Activities—Title 33 CFR Subchapter N.

OMB Control Number: 1625–0044.

Type of Request: Extension of currently approved collection.

Affected Public: Operators of facilities and vessels engaged in activities on the OCS.

Form: CG–5432.

Abstract: The information is needed to ensure compliance with the safety regulations related to OCS activities. The regulations include reporting and recordkeeping requirements for annual inspections of fixed OCS facilities, employee citizenship records, station bills, emergency evacuation plans, and equivalency determinations.

Burden Estimate: The estimated burden is 5,867 hours a year.

3. *Title:* Adequacy Certification for Reception Facilities and Advance Notice—33 CFR Part 158.

OMB Control Number: 1625–0045.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of reception facilities, and owners and operators of vessels.

Form: CG–5401, CG–5401A, CG–5401B, CG–5401C.

Abstract: Title 33 U.S.C. 1905 give the Coast Guard the authority to certify the adequacy of reception facilities in ports. Reception facilities are needed to receive waste from ships which may not discharge at sea. Under theses regulations in 33 CFR, Parts 151 and 158, there are discharge limitations for oil and oily waste, noxious liquid substances, plastics and other garbage.

Burden Estimate: The estimated burden is 1,058 hours a year.

Dated: November 26, 2004.

R.T. Hewitt,

Assistant Commandant for Command, Control, Communications, Computers, and Information Technology.

[FR Doc. 04–26668 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–16860]

Gulf Landing LLC Liquefied Natural Gas Deepwater Port License Application; Final Environmental Impact Statement

AGENCY: Coast Guard, DHS; Maritime Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce the availability of the final environmental impact statement (FEIS) for the Gulf Landing LLC Liquefied Natural Gas Deepwater Port License Application, and request public comments. The FEIS covers the construction and operation of the proposed deepwater port and associated anchorages on the Outer Continental Shelf in the Gulf of Mexico, West Cameron Lease Block Number 213, approximately 38 miles south of Cameron, Louisiana.

DATES: Comments and related material must reach the Docket Management Facility on or before January 3, 2005.

ADDRESSES: The FEIS is available in the docket on the Internet at *http://dms.dot.gov* under docket number USCG–2004–16860, or by contacting the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**), or by contacting: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying, at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Derek Dostie, U.S. Coast Guard, telephone: 202–267–0662, email: *ddostie@comdt.uscg.mil.* If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone: 202–366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

We ask that you submit your comments, or other relevant information, on the FEIS. We will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2004–16860.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Submit comments or material using only one of the following methods:

- Electronic submission to the Docket Management Facility's Docket Management System (DMS), *http://dms.dot.gov.*
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the DMS Web site (*http://dms.dot.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the DMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Docket Management Facility (see **ADDRESSES**, or electronically on the DMS Web site.

SUPPLEMENTARY INFORMATION:

License Application

Deepwater ports must be licensed, and the license process is governed by the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* The Gulf Landing Deepwater Port license application was submitted to the Secretary of Transportation on November 3, 2003. Additional information concerning the contents of the application can be found online at *http://dms.dot.gov* under docket number USCG–2004–16860, or in the notice of application published in the **Federal Register** at 69 FR 3165 (Jan. 22, 2004), pages 3165–3167.

Proposed Deepwater Port

The application plan calls for construction of a deepwater port and associated anchorages in an area situated in the Gulf of Mexico, approximately 38 miles south of Cameron, Louisiana, in West Cameron Lease Block Number 213, in water depth of approximately 55 feet, and adjacent to an existing shipping fairway servicing the Calcasieu River and area ports.

Gulf Landing's terminal would be capable of storing up to 200,000 cubic meters of liquefied natural gas (LNG). On average, Gulf Landing expects the terminal would vaporize and deliver 1 billion cubic feet per day (Bcfd) of natural gas to the pipelines; with a peak daily send-out rate of 1.2 Bcfd. Gulf Landing proposes to construct, own, and operate up to 5 offshore pipelines, ranging from 16 to 36 inches in diameter that would traverse a combined 65.7 nautical miles. The pipelines would interconnect with existing natural gas pipelines located in the Gulf of Mexico. Gas would then be delivered to the onshore national pipeline grid for delivery to any consumption market east of the Rocky Mountains.

The project would consist of two concrete gravity base structures (GBSs) housing the LNG containment facilities, along with topside unloading and vaporization equipment, living quarters, and a ship berthing system.

The terminal would be able to receive LNG carriers with cargo capacities between 125,000 and 200,000 cubic meters and unload up to 135 LNG carriers per year. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receiving of cargo during specified atmospheric and sea states would be provided at the port.

The regasification process would consist of lifting the LNG from storage tanks, pumping the cold liquid to pipeline pressure, subsequent vaporization of the LNG across heat exchanging equipment, and send-out through custody transfer metering to the gas pipeline network. No gas conditioning is required for the terminal since the incoming LNG would be pipeline quality.

Dated: November 29, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation Specialist, Deepwater Ports Program Manager, U.S. Maritime Administration.

[FR Doc. 04–26580 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD05–04–201]

Notice, Request for Comments; Letter of Recommendation, LNG Crown Landing LLC, Logan Township, Gloucester County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The U.S. Coast Guard Captain of the Port (COTP) Philadelphia is preparing a letter of recommendation as to the suitability of the Delaware Bay and River waterway for liquefied natural gas (LNG) marine traffic. The letter of recommendation is in response to a letter of intent submitted by Crown Landing LLC to operate a LNG facility in Logan Township, Gloucester County, New Jersey. The COTP Philadelphia is soliciting written comments and related material, and will hold a public meeting seeking comments, pertaining specifically to maritime safety and security aspects of the proposed LNG facility. In preparation for issuance of a letter of recommendation and the completion of certain other regulatory mandates, the COTP Philadelphia will consider comments received from the public as input into a formalized risk assessment process. This process will assess the safety and security aspects of the facility, adjacent port areas, and navigable waterways.

DATES: (1) All written comments and related material must reach the Coast Guard on or before January 18, 2005.

(2) A public meeting will be held Tuesday, January 11, 2005, from 3 p.m. to 7 p.m.

(3) Those who plan to speak at the meeting should provide their name by January 7, 2005 to Lieutenant Commander Timothy Meyers using one of the methods listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: You may submit written comments to Commanding Officer, U.S. Coast Guard Marine Safety Office/Group Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147. Marine Safety Office/Group Philadelphia maintains a file for this notice. Comments and material received will become part of this file and will be available for inspection and copying at the Marine Safety Office/Group Philadelphia, Waterways Management Branch, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

The public meeting location is The Embassy Suites, 9000 Bartram Avenue, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Lieutenant Commander Timothy Meyers at Coast Guard Marine Safety Office/Group Philadelphia, PA, by one of the methods listed below:

(1) Phone at (215) 271–4860.

(2) E-mail at *TMEYERS@msogruphila.uscg.mil.*

(3) Fax to (215) 271–4903.

SUPPLEMENTARY INFORMATION:

Request for Written Comments

We encourage you to submit written comments and related material pertaining specifically to marine safety and security aspects associated with the proposed LNG facility. If you do so, please include your name and address, identify the docket number for this notice (CGD05–04–201), and give the reason for each comment. You may submit your comments and related material by mail, or hand delivery, as described in **ADDRESSES**, or you may send them by fax or e-mail using the contact information under **FOR FURTHER INFORMATION CONTACT**. To avoid confusion and duplication, please

submit your comments and material by only one means.

If you submit comments by mail or hand 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 U.S. Coast Guard Marine Safety Office/Group Philadelphia, please enclose a stamped, self-addressed postcard or envelope.

Public Meeting

Due to the scope and complexity of this project, we plan to hold a public meeting to allow the public the opportunity to comment on the proposed LNG facility. With advance notice, organizations and members of the public may provide oral statements regarding the suitability of the Delaware Bay and River waterway for LNG vessel traffic. In the interest of time and use of the public meeting facility, oral statements should be limited to five minutes. Persons wishing to make oral statements should notify Lieutenant Commander Timothy Meyers using one of the methods listed under **FOR FURTHER INFORMATION CONTACT** by January 7, 2005. Written comments may be submitted at the meeting or to the Docket up to January 18, 2005.

Background and Purpose

In accordance with the requirements of 33 CFR 127.007, Crown Landing LLC submitted a letter of intent on July 30, 2004 to operate an LNG facility in Logan Township, Gloucester County, NJ. Crown Landing LLC is a wholly owned subsidiary of BP America Production Company.

The proposed terminal is an LNG import, storage, and re-gasification facility. LNG carriers (ships) would berth at a new pier and LNG would be transferred by pipeline from the carriers to one of three storage tanks, each with a net capacity of 150,000 cubic meters (m^3) and a gross capacity of 158,000 m^3. The LNG would then be re-gasified and metered into natural gas pipelines. LNG would be delivered to the terminal in double-hulled LNG carriers ranging in capacity from 138,000 m^3 to 200,000 m^3. The larger carriers would measure up to approximately 1,500 feet long with up to approximately a 170 foot wide beam, and draw 38 feet of water. The Crown Landing terminal would handle approximately 100–150 vessels per year, depending upon natural gas demand, and carrier size, with shipments arriving about every three days.

The U.S. Coast Guard exercises regulatory authority over LNG facilities which affect the safety and security of port areas and navigable waterways under Executive Order 10173, the Magnuson Act (50 U.S.C. 191), the Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221, *et seq.*) and the Maritime Transportation Security Act of 2002 (46 U.S.C. Section 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in Title 33 CFR part 105, and siting as it pertains to the management of vessel traffic in and around the LNG facility.

Upon receipt of a letter of intent from an owner or operator intending to build a new LNG facility, the Coast Guard COTP conducts an analysis that results in a letter of recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels. Specifically, the letter of recommendation addresses the suitability of the waterway based on:

(1) The physical location and layout of the facility and its berthing and mooring arrangements.

(2) The LNG vessels' characteristics and the frequency of LNG shipments to the facility.

(3) Commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility.

(4) Density and character of marine traffic on the waterway.

(5) Bridges, or other manmade obstructions in the waterway.

(6) Depth of water.

(7) Tidal range.

(8) Natural hazards, including rocks and sandbars.

(9) Underwater pipelines and cables.

(10) Distance of berthed LNG vessels from the channel, and the width of the channel.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410).

The Coast Guard will also provide input to other Federal, State, and local government agencies reviewing the project. Under an interagency agreement the Coast Guard will provide input to, and coordinate with, the Federal Energy Regulatory Commission (FERC), the lead Federal agency for authorizing the siting and construction of onshore LNG facilities, on safety and security aspects of the Crown Landing project, including both the marine and land-based aspects of the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the COTP Philadelphia will be conducting a formal risk assessment, evaluating various safety and security aspects associated with Crown Landing's proposed project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-section of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input into the risk assessment process.

Additional Information

Additional information about the Crown Landing LLC, LNG project is available from FERC's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using their eLibrary link. For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request assistance at the meeting, contact Lieutenant Commander Timothy Meyers listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: November 22, 2004.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 04–26588 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Evaluation of the Federal Emergency Management Agency's National Flood Insurance Program (NFIP).

OMB Number: 1660–NEW10.

Abstract: The National Flood Insurance Program (NFIP) will conduct a comprehensive evaluation of its impact on land-use aimed at reducing loss of property due to floods. The study will center around six areas of inquiry through a combination of case studies, in-depth interviews, and surveys applied to an across-the-board representation of NFIP constituencies involving communities, state agencies, mortgage lenders, insurance agents, real estate brokers, developers, and individual policy and non policyholders.

Affected Public: Individuals and households, businesses, and State, local and tribal governments.

Number of Respondents: 2,716.

Estimated Time per Respondent: 20 to 25 minutes for survey questionnaires; 90 to 120 minutes for in-depth interviews on case analysis.

Estimated Total Annual Burden Hours: 1,268.

Frequency of Response: One-time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 24, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–26602 Filed 12–2–04; 8:45 am]

BILLING CODE 9110–11–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, 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 proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the information collection outlined in 44 CFR part 71, as it pertains to application for National Flood Insurance Program (NFIP) insurance for buildings located in Coastal Barrier Resource System (CBRS) communities.

SUPPLEMENTARY INFORMATION: The Coastal Barrier Resources Act (CBRA Pub. L. 97–3480) and the Coastal Barrier Improvement Act (CBRA Pub. L. 101–591) are Federal laws that were enacted on October 1, 1982, and November 16, 1990, respectively. The legislation was implemented as part of a Department of the Interior (DOI) initiative to preserve the ecological integrity of areas DOI designates as coastal barriers and otherwise protected areas. The laws provide this protection by prohibiting all Federal expenditures or financial assistance including flood insurance for residential or commercial development in areas identified with the system. When an application for flood insurance is submitted for buildings located in CBRS communities, documentation must be submitted as evidence of eligibility.

FEMA regulation 44 CFR part 71 implements the Coastal Barrier Resources Act. The documentation required in 44 CFR section 71.4 is provided to FEMA for a determination that a building which is located on a designated coastal barrier and for which a application for flood insurance is being made, is neither new construction or a substantial improvement, and is, therefore, eligible for NFIP coverage. If the information is not collected, NFIP policies would be provided for buildings, which are legally ineligible for it, thus exposing the Federal Government to an insurance liability Congress chose to limit.

Collection of Information

Title: Implementation of Coastal Barrier Resources Act.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0010.

Abstract: When an application for flood insurance is submitted for buildings located in CBRS communities, one of the following types of documentation must be submitted as evidence of eligibility:

—Certification from a community official stating the building is not located in a designated CBRS area.

—A legally valid building permit or certification from a community official stating that the building's start of construction date preceded the date that the community was identified in the system.

—Certification from the governmental body overseeing the area indicating that the building is used in a manner consistent with the purpose for which the area is protected.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; Farms; Federal Government; and State, local or tribal governments.

Number of Respondents: 60.

Frequency of Response: One time.

Hours Per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 90.

Estimated Total Cost to Respondents: $600 (60 respondents × $10 per respondent). The cost to the respondent, *i.e.,* applicant for flood insurance, is the cost if any, to obtain the required documentation from local officials. Fees charged, if any, to the applicants, are nominal, *i.e.,* the cost of photocopying the public record. Information of this type is frequently provided upon request free of charge by the community as a public service. The average cost to the respondent is estimated to be $10, the cost to make phone calls, mail a written request, or make a trip to a local office to obtain the document, and includes any copying fees, which may be charged by the local office.

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 Muriel B. Anderson, Section Chief, Records Management, 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 Lynn Sawyer, Program Analyst, Risk Insurance Branch, Mitigation Division, at 301–918–1452 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: November 18, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–26603 Filed 12–2–04; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments. FEMA will use The National Fire Academy Executive Fire Officer Program Application form to enroll senior level firefighting officers or individuals in courses to advance their knowledge and ability to prevent and control fires.

Title: National Fire Academy Executive Fire Officer Program Application Form.

OMB Number: 1660–0021.

Abstract: The Executive Fire Officer Program (EFOP) is available to senior level firefighting officers or individuals who are responsible for a major functional area within a fire service organization. The curriculum consists of courses used to advance the knowledge and ability to prevent and control fires including tactics and command of firefighting. FEMA Form 95–22 is used to assess samples of writing syle and analytical ability. FEMA Form 75–5 is used in conjunction with FEMA form 95–22 to screen candidates for the EFOP.

Affected Public: Individuals or Households.

Number of Respondents: 300.

Estimated Time per Respondent: FEMA Form 95–22, Executive Fire Officer Program Application for Admission, 1 hour; Additional Items, 1 hour.

Estimated Total Annual Burden Hours: 600 hours.

Frequency of Response: On occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 19, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–26604 Filed 12–2–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Chemical Stockpile Emergency Preparedness Program (CSEPP) Evaluation and Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: OMB 1660–0057.

Abstract: Consistent with performance measurement requirements set forth by the Government Performance Results Act, the Chemical Stockpile Preparedness Program (CSEPP) will continue collecting data from State, local and tribal governments, individuals, and businesses residing in immediate or surrounding areas of eight chemical stockpile sites. The study will: Assess outreach program effectiveness, measure/monitor customer satisfaction, and identify weaknesses and strengths of individual sites.

Affected Public: Individuals (residents), Businesses, State, local, and tribal governments.

Number of Respondents: 7,374 residents, businesses and government officials.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,845.

Frequency of Response: Once annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 17, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–26605 Filed 12–2–04; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–94]

Notice of Submission of Proposed Information Collection to OMB; Technical Assistance for Community Planning Development Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for continued approval to collect information from applicants for technical assistance funds with which CPD grantees will engage providers to supply expertise to shape their resources into effective, coordinated, neighborhood and community development strategies to revitalize and physically, socially and economically strengthen their communities.

DATES: *Comments Due Date:* January 3, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0166) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Technical Assistance for Community Planning Development Programs.

OMB Approval Number: 2506–0166.

Form Numbers: SF–424, HUD–424B, HUD–424CB, HUD–424CBW, SF–LLL, HUD–2880, HUD–96010–1.

Description of the Need for the Information and Its Proposed Use: This is a request for continued approval to collect information from applicants for technical assistance funds with which CPD grantees will engage providers to supply expertise to shape their resources into effective, coordinated, neighborhood and community development strategies to revitalize and physically, socially and economically strengthen their communities.

Frequency of Submission: Quarterly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	177	12		5.5		11,710

Total Estimated Burden Hours: 11,710.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 29, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–26648 Filed 12–2–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–49]

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.

EFFECTIVE DATE: December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 24, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–26382 Filed 12–2–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4966–N–01]

The Performance Review Board

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of appointment.

SUMMARY: The Department of Housing and Urban Development announces the appointment of Deputy Secretary Roy A. Bernardi as Chairperson of the Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–0001.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410–3000, telephone (202) 708–1381 (this is not a toll-free number).

Dated: November 12, 2004.

Alphonso Jackson,

Secretary.

[FR Doc. 04–26647 Filed 12–2–04; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Egmont Key, Pinellas, and Passage Key National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Egmont Key, Pinellas, and Passage Key National Wildlife Refuges located in Hillsborough, Pinellas, and Manatee Counties, Florida, respectively. These three refuges, known as the Tampa Bay Refuges, are managed as part of the Chassahowitzka National Wildlife Refuge Complex.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refute System Administration Act of 1966, as amended (16 U.S.C. 668dd et seq.), to achieve the following:

(1) To advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will inform people in the general area near each refuge of the time and place of such opportunities for public input to the planning process.

DATES: To ensure consideration, comments must be received within 30 days of the date of this notice.

ADDRESSES: Address comments, questions, and requests for more information to the following: Mary Morris, Natural Resource Planner, St. Marks National Wildlife Refuge, P.O. Box 68, St. Marks, Florida 32355; Telephone 850/925–6121; e-mail *mary_morris@fws.gov.* Additional information concerning these refuges may be found at the Service's Internet site *http://www.fws.gov/.*

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. This plan guides management decisions and identifies the goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input to this planning process is essential.

Egmont Key National Wildlife Refuge was established in 1974 and consists of 350 acres. The refuge, accessible only by boat, provides nesting, feeding, and resting habitat for brown pelicans, terns, and other colonial nesting water birds.

Pinellas National Wildlife Refuge was established in 1951 and consists of 403 acres. The refuge, accessible only by boat, was established as a breeding ground for colonial bird species. It is comprised of several islands, including Indian, Tarpon, Mule, and Jackass Keys.

Passage Key National Wildlife Refuge was established in 1905 and consists of 30 acres. The refuge, accessible only by boat, provides nesting, feeding, and resting habitat for colonial water birds, including laughing gulls, royal terns, black skimmers, sandwich terns, brown pelicans, and oyster catchers.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 14, 2004.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 04–26660 Filed 12–2–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by January 3, 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 to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov*. Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Anthony R. Dodd, GeoSyntec Consultants, Inc., Atlanta, Georgia, TE095972–0

The applicant requests authorization to take (capture, identify, and release) the following species: Shortnose sturgeon (*Acipenser brevirostrum*), blue shiner (*Cyprinella caerulea*), Etowah darter (*Etheostoma etowahae*), Cherokee darter (*Etheostoma scotti*), amber darter (*Percina antesella*), goldline darter (*Percina aurolineata*), Conasauga logperch (*Percina jenkensi*), snail darter (*Percina tanasi*), fat threeridge (*Amblema neislerii*), upland combshell (*Epioblasma metastriata*), southern acornshell (*Epioblasma othcaloogensis*), southern combshell (*Epioblasma penita*), shinyrayed pocketbook (*Lampsilis subangulata*), gulf moccasinshell (*Medionidus penicillatus*), Coosa moccasinshell (*Medionidus parvulus*), southern clubshell (*Pleurobema decisum*), southern pigtoe (*Pleurobema georgianum*), ovate clubshell (*Pleurobema perovatum*), oval pigtoe (*Pleurobema pyriforme*), purple bankclimber (*Elliptoideus sloatianus*), fine-lined pocketbook (*Lampsilis altilis*), orangenacre mucket (*Lampsilis perovalis*), Alabama moccasinshell (*Medionidus acutissimus*), and triangular kidneyshell (*Ptychobranchus greeni*). The proposed activities would take place while conducting presence/absence surveys throughout the state of Georgia.

Applicant: Jennifer A. Wallens, Stantec Consulting Services Inc. or Ecosystem Consultants Inc., Nolensville, Tennessee, TE095978–0

The applicant requests authorization to take (capture, identify, release) the Nashville Crayfish (*Orconectes shoupi*), bald eagle (*Haliaeetus leucocephalus*), eastern (=*cougar*) puma (*Puma* (=*Felis*) *concolor couguar*), Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*), least tern (*Sterna antillarum*), bluetail mole skink (*Eumeces egregius lividus*), sand skink (*Neoseps reynoldsi*), eastern indigo snake (*Drymarchon corais couperi*), gopher tortoise (*Gopherus polyphemus*), Alabama red-belly turtle (*Pseudemys alabamensis*), bog turtle (*Clemmys muhlenbergii*), flattened musk turtle (*Sternotherus depressus*), ringed map turtle (*Graptemys oculifera*), yellow-blotched map turtle (*Graptemys flavimaculata*), Audubon's crested caracara (*Polyborus plancus audubonii*), Mississippi sandhill crane (*Grus canadensis pulla*), whooping crane (*Grus americana*), Florida scrub jay (*Aphelocoma coerulenscens*), Everglade snail kite (*Rostrhamus sociabilis plumbeus*), brown pelican (*Pelecanus occidentalis*), Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*), Florida grasshopper sparrow (*Ammodramus savannarum floridanus*), wood stork (*Mycteria americana*), Bachman's (=*wood*) warbler (*Vermivora bachmanii*), and red-cockaded woodpecker (*Picoides borealis*) while conducting presence/absence surveys and relocation activities for the Nashville crayfish and the gopher tortoise. The proposed activities would occur throughout the species' ranges in Tennessee, Florida, Georgia, Alabama, Kentucky, North Carolina, South Carolina, Mississippi, and Illinois.

Applicant: Michael T. Mengak, Warnell School of Forest Resources, University of Georgia, Athens, Georgia, TE095980–0

The applicant requests authorization to take (capture, radio-tag, track, and release) Key Largo woodrats (*Neotoma floridana smalli*). Fifteen (15) females and fifteen (15) males may be radio-tagged. The proposed activities would take place while conducting population estimations at Crocodile Lakes National Wildlife Refuge and Key Largo Hammocks Botanical Preserve, Monroe County, Florida.

Applicant: Reed F. Noss, University of Central Florida, Department of Biology, Orlando, Florida, TE096068

The applicant requests authorization to take (capture, band, radio-tag, monitor nest, release) Florida grasshopper sparrows (*Ammodramus savannarum floridanus*) while conducting research and maintaining a monitoring program. The proposed activities would occur on the Kissimmee Prairie State Preserve, Florida.

Applicant: CCR Environmental, Inc., Charles V. Rabolli, Atlanta, Georgia 30340

The applicant requests authorization to harass the red-cockaded woodpecker (*Picoides borealis*) while conducting presence/absence surveys, constructing artificial nest cavities, and monitoring activities in clusters. The proposed activities would take place throughout the species' range in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

Applicant: Hopi Elisabeth Hoekstra, University of California, San Diego, La Jolla, California, TE095962–0

The applicant requests authorization to take (capture, measure, collect genetic samples, release) up to 25 of each of the following species: Alabama beach mouse (*Peromyscus polionotus ammobates*), Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*), Choctawhatchee beach mouse (*Peromyscus polionotus allophyrs*), St. Andrews beach mouse (*Peromyscus polionotus peninsularis*), Anastasia Island beach mouse (*Peromyscus polionotus phasma*), and the Southeastern beach mouse (*Peromyscus polionotus niveiventris*). Take would occur while examining the evolution of morphological variation, with a focus on pigmentation, in natural populations of *Peromyscus polionotus.* The proposed activities would occur in Baldwin County, Alabama; Escambia, Santa Rosa, Okaloosa, Walton, Bay, Gulf, St. John, and Brevard Counties, Florida.

Dated: November 12, 2004.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 04–26638 Filed 12–2–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Folsom Dam Road Restricted Access, Folsom, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement (EIS) and notice of public hearing [DES 04–58].

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) has made available for public review and comment a Draft EIS for the Folsom Dam Road Restricted Access action. The Draft EIS describes and presents the environmental effects of the preferred alternative, the no-Action alternative and two additional alternatives. Two public hearings will be held to receive comments from individuals and organizations on the Draft EIS.

DATES: The Draft EIS will be available for a 45-day public review period. Comments are due on January 18, 2005. Two public hearings have been scheduled to receive oral or written comments regarding the project's environmental effects:

- January 4, 2005, 4 p.m. to 8 p.m., Sacramento, CA
- January 5, 2005, 3 p.m. to 9 p.m., Folsom, CA

ADDRESSES: The public hearings will be held at the following locations:

- Sacramento, CA—Tsakopoulos Library Galleria, 828 I Street, Sacramento, CA 95814–2589.
- Folsom, CA—Folsom Community Center West Room, 52 Natoma Street, Folsom, CA 95630.

Send comments on the Draft EIS to Folsom Dam Restricted Access Project, c/o Robert Schroeder, Project Manager, Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630–1799.

Copies of the Draft EIS may be requested from Ms. Marian Echeverria, Reclamation, 2800 Cottage Way, Sacramento, CA 95825 or by calling 916–978–5105. *See* **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Robert Schroeder, Project Manager, Bureau of Reclamation, at 916–989–7274.

SUPPLEMENTARY INFORMATION: The Draft EIS addresses impacts from continuing indefinitely restricted access across Folsom Dam Road based on security issues and potential disaster flood inundation. The Preferred Action is to continue the closure of Folsom Dam Road. The EIS also addresses a No-Action alternative that would reopen the road to public use similar to pre-2003 conditions, and two additional alternatives that would include restricted Folsom Dam Road access involving combinations of vehicle inspections and restrictions on type and number of vehicles, and time of use. The Draft EIS has identified the key issues to include traffic and circulation, socioeconomics, air quality, and recreation. In addition to the key issues listed above, Reclamation has identified other issue areas which have also been included in the EIS. These include biology, water quality, cultural resources, ground water, water supply, power supply, municipal and industrial land uses, demographics, visual resources, public health, social well-being, power consumption and production, and cumulative effects.

Copies of the Draft EIS are available for public inspection and review at the following locations:

- Sacramento Public Library, 828 I Street, Sacramento, CA 95814
- Folsom Public Library, 900 Persifer Street, Folsom, CA 95630
- U.S. Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: 303–445–2072
- U.S. Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: 916–978–5100
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001
- May be available at other libraries in the project area.

Oral and written comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Hearing Process Information

The purpose of the public hearing is to provide the public with an opportunity to comment on environmental issues addressed in the Draft EIS. Written comments will also be accepted.

Persons needing special assistance to attend and participate in the public hearing should contact Mr. Robert Schroeder, at 916–989–7274, as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public hearing. Information regarding this proposed action is available in alternative formats upon request.

Dated: July 22, 2004.

John F. Davis,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 04–26666 Filed 12–2–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 016–2004]

Privacy Act of 1974; Notice of Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Personnel Staff, Justice Management Division (JMD), Department of Justice (Justice), is removing a previously published Privacy Act system of records entitled ''Department of Justice Staffing and Classification System, Justice/JMD–021.'' Justice/JMD–021 was published in the **Federal Register** on October 30, 2001 (66 FR 54781).

This notice is unnecessary because the records are adequately covered by an Office of Personnel Management (OPM) Governmentwide (GOVT) Privacy Act notice entitled ''Recruiting, Examining, and Placement Records, OPM/GOVT–5,'' last published in the **Federal Register** on April 27, 2000 (65 FR 24732, 24741). We note that the General Records Schedule (GRS) is revised periodically, and that the GRS 1, covering these records, has been updated since OPM published its notice. The Department of Justice maintains these records in accordance with the current disposition schedule for GRS 1. The GRS may be viewed at *http://www.archives.gov/records_management/records_schedules.html.*

Therefore, the ''Department of Justice Staffing and Classification System, Justice/JMD–021'' is removed from the Department's compilation of Privacy Act systems of records, effective on the date of publication of this notice in the **Federal Register**.

Dated: November 24, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 04–26589 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–CG–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 017–2004]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice (DOJ or the Department) proposes to establish a new Department-wide system of records entitled ''Access Control System (ACS), DOJ–011.'' This system notice covers the DOJ-controlled security access system at the Robert F. Kennedy Main Justice Building, as well as any other DOJ-controlled security access systems in buildings where the DOJ operates. This system does not include building access systems that are not under the control of the DOJ, for example systems maintained by the building manager in buildings where the DOJ is a tenant. This system also does not include any separately-noticed security access control systems, such as those of the Federal Bureau of Investigation and the Bureau of Prisons.

This Department-wide system notice replaces, and the Department hereby removes, on the effective date of this notice, the following.

Security Access Control System (SACS), Justice/JMD–014, last published January 8, 1997 at 62 FR 1132.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by January 12, 2005. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC, 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: November 24, 2004.

Paul R. Corts,

Assistant Attorney General for Administration,

JUSTICE/DOJ–011

SYSTEM NAME:

Access Control System (ACS).

SYSTEM LOCATION:

Records are located at the Department of Justice (DOJ) Robert F. Kennedy Main Justice Building (MJB), 950 Pennsylvania Ave., NW., Washington, DC 20530, and at other buildings with DOJ-controlled access.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for, sought, been considered for, attempted and/or obtained access to the MJB and other buildings, office space, or real property with DOJ-controlled access control systems. May include: current and former DOJ employees, contractors, vendors, grantees, experts, consultants, task force personnel, volunteers, detailees, visitors, and other non-DOJ employees. May also include persons identified as employers, sponsors, references, or contacts for the above individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include: names; social security numbers; dates of birth; physical descriptions; badge numbers; information on employer, sponsor, contacts, and/or references; home and/or business addresses and phone numbers; dates and times of entry, exit, and/or passage through control points; signatures, photographs, videos, electronic images, fingerprints, and other biometric identifiers; vehicle identification data; drivers license number; purpose of visit and person visited and/or other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12958, as amended by Executive Order 13292; Title 5 U.S.C. 552a(e)(10); Title 44 U.S.C. chapters 21 and 33. These statutes and Executive Orders are directed toward security of United States Government records maintained by federal agencies. Title 40 U.S.C. chapter 318a; and Title 41 CFR section 102–81.10 and 81.15. This statute and the federal regulations are directed toward security of United States Government buildings and the people therein.

PURPOSE(S):

Records in this system are necessary to maintain the security of the personnel and locations at which the DOJ operates, and of DOJ records, vehicles, property and equipment, and are used to determine eligibility and/or the status of individuals who have applied for, sought, been considered for, attempted and/or obtained access to such locations. Records in this system are also used to maintain control of badges issued for access to locations where the DOJ operates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information from this system of records may be disclosed under the following circumstances when it has been determined by the Department of Justice that such a need exists:

To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a

particular case would constitute an unwarranted invasion of personal privacy.

To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

To the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for such purposes.

To any person or entity in either the public or private sector, domestic or foreign, if deemed by the DOJ to be necessary in eliciting information or cooperation from the recipient for use by the DOJ in furthering the purposes of the system, *e.g.*, disclosure of personal identifying information to an associate or employer of a person to confirm the person's identity, suitability, and reason for access to a DOJ facility.

In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

To appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

To federal, state, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most information is maintained in computerized form and stored in memory, on disk storage, on computer tape, or other computer media. However, some information may also be maintained in hard copy (paper) or other form.

RETRIEVABILITY:

Information is typically retrieved by name of the individual, other personal identifiers, or by access badge number.

SAFEGUARDS:

Records in this system are maintained in limited access space in DOJ-controlled facilities and offices. Computerized data is password protected. All DOJ personnel are required to pass a background investigation. The information is accessed only by authorized DOJ personnel or by non-DOJ personnel properly authorized to assist in the conduct of an agency function related to these records.

RETENTION AND DISPOSAL:

Records in this system in all formats are maintained and disposed of in accordance with appropriate authority of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

For the Main Justice Building and certain satellite offices in the Washington DC Metropolitan Area: Director, Security and Emergency Planning Staff, Justice Management Division, Room 6217, 950 Pennsylvania Ave., NW., Washington, DC 20530.

For other Specific Buildings/Components:

Security System Manager, Justice Data Center—Washington, 1151–D Seven Locks Rd., Rockville, MD 20854;

Security System Manager, Justice Data Center—Dallas, 207 S. Houston St., Dallas, TX 75202;

Chief, Physical Security, Executive Office of U.S. Attorneys, U.S. DOJ.EOUSA–SPS, 600 E Street, NW., Suite 2600, Washington, DC 20530;

Director, Security Programs Staff, Criminal Division, 1331 F Street, NW., Suite 300, Washington, DC 20530;

Deputy Chief Inspector, Office of Security Programs, Drug Enforcement Administration, 700 Army Navy Drive, Arlington, VA 22202;

Chief, Security and Emergency Programs Division, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Room 2240, Washington, DC 20226;

Security Program Manager, Office of the Inspector General, 950 Pennsylvania Ave., NW., Washington, DC 20530;

Security Programs Manager, Office of Intelligence Policy and Review, Department of Justice, Washington, DC 20530;

Security Programs Manager, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2103, Falls Church, VA 22041;

Case Management Specialist, Office of the United States Trustee, 33 Whitehall St., 21st Floor, New York, NY 10004–2112;

Security Programs Manager, United States Marshals Service, United States Marshals Service Headquarters, Washington, DC 20530–1000;

DOJ/INTERPOL–USNCB, 1301 New York Ave., NW., Washington, DC 20530;

Security Program Manager, Tax Division, 555 Fourth St., NW., Washington, DC 20530;

Chief, Office of Security and Classified Programs, National Drug Intelligence Center, 319 Washington St., Johnstown, PA 15901;

NOTIFICATION PROCEDURES:

Same as Record Access Procedures.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked ''Privacy Act Request.'' Include in the request your full name and complete address. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law

that permits statements to be made under penalty of perjury and dated as a substitute for notarization. You may submit any other identifying data you wish to furnish to assist in making a proper search of the system. Requests for access should be addressed to: Facilities and Personnel Group, Security and Emergency Planning Staff, Justice Management Division, Room 6217, U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the appropriate System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Include information requested above for Record Access.

RECORD SOURCE CATEGORIES:

See Categories of Individuals Covered by the System.

EXEMPTIONS CLAIMED BY THE SYSTEM:

None.

[FR Doc. 04–26590 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ANSI Accredited Standards Committee ''C50''

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ANSI Accredited Standards Committee ''C50'' (''C50 Committee''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ANSI Accredited Standards Committee ''C50'', Rosslyn, VA. The nature and scope of the C50 Committee's standards development activities are: Standards related to rotating electrical equipment. C50 Committee maintains two standards relating to motors and generators. The standards developed by C50 Committee are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26618 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ANSI Accredited Standards Committee ''C29''

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ANSI Accredited Standards Committee ''C29'' (''C29 Committee''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ANSI Accredited Standards Committee ''C29'', Rosslyn, VA. The nature and scope of C29 Committee's standards development activities are: Standards related to insulators for electrical power lines. C29 Committee currently maintains 17 standards relating to different types of insulators used on electrical power lines, including wet process porcelain insulators, composite insulators and fiberglass insulators. The standards developed by C29 Committee are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26619 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ANSI Accredited Standards Committee ''C81''

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ANSI Accredited Standards Committee ''C81'' (''C81 Committee''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ANSI Accredited Standards Committee ''C81'', Rosslyn, VA. The nature and scope of C81 Committee's standard development activities are: To develop and maintain standards relating to electric lamp bases and holders. C81 Committee currently maintains four standards relating to different types of electric lamp bases and lamp holders. The standards developed by C81 Committee are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26620 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ANSI Accredited Standards Committee ''C8''

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ANSI Accredited Standards Committee ''C8'' (''C8 Committee''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notification simultaneously with the

Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notification were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ANSI Accredited Standards Committee ''C8'', Rosslyn, VA. The nature and scope of the C8 Committee's standards development activities are: To develop and maintain American National Standards (''ANSI'') related to wire and cable products.

Currently, C8 Committee maintains 38 standards relating to high performance wire, power cables, and communications cable and wire. The standards developed by C8 Committee are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26621 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ANSI Accredited Standards Committee ''C12''

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ANSI Accredited Standards Committee ''C12'' (''C12 Committee''), by its Secretariat, National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: ANSI Accredited Standards Committee ''C12'', Rosslyn, VA. The nature and scope of C12 Committee's standards development activities are: To develop and maintain American National Standards related to electricity meters. Currently, C12 Committee maintains 24 standards relating to electricity meters used in measuring the consumption of electricity. The standards developed by C12 Committee are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26622 Filed 12–02–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DICOM Standards Committee

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DICOM Standards Committee (''DICOM''), by its Secretariat, the National Electrical Manufacturers Association (''NEMA''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: DICOM Standards Committee, Rosslyn, VA. The nature and scope of DICOM's standards development activities are: To develop and maintain the DICOM (''Digital Communications in Medicine'') Standard, an international standard for communication of biomedical diagnostic and therapeutic information in disciplines that use digital images and associated data. The goals of DICOM are to achieve compatibility and to improve workflow efficiency between imaging systems and other information systems in healthcare environments worldwide. The standards developed by DICOM are published by NEMA.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26623 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Environmental Sciences and Technology

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Environmental Sciences and Technology (''IEST'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Institute of Environmental Sciences and Technology, Rolling Meadows, IL. The nature and scope of IEST's standards development activities are: (1) To develop Recommended Practices for nonmandatory use in the contamination control, design and test, and product reliability industries; and (2) to serve by appointment for the American National Standards Institute (ANSI) as Administrator of the U.S. Technical Advisory Committee to ISO Technical Committee 209 Cleanrooms and Associated Controlled Environments.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26616 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Board of Certification for Community Association Managers

Notice is hereby given that, on September 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Board of Certification for Community Association Managers (''NBC–CAM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Board of Certification for Community Association Managers, Alexandria, VA. The nature and scope of NBC–CAM's standards development activities are: (1) To enhance the professional practice of community association management; (2) to identify the body of knowledge necessary in that professional practice; and (3) to recognize those individuals who have demonstrated a satisfactory understanding of that body of knowledge.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26615 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open DeviceNet Vendor Association, Inc.

Notice is hereby given that, on October 13, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open DeviceNet Vendor Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tyco Electronics, Middletown, PA; SensArray Corporation, Austin, TX; Pfeiffer Vacuum GmbH, Asslar, GERMANY; F.A. Elec, Seoul, REPUBLIC OF KOREA; Draka USA, Franklin, MA; RivaTek Inc., Minneapolis, MN; Acromag Inc., Wixom, MI; Rockwell Automation/Reliance Electric, Greenville, SC; Applied Robotics Inc., Glenville, NY; Grid Connect Inc., Naperville, IL; Avery Weigh-Tronix, Fairmont, MN; Hanyoung Nux, Incheon, REPUBLIC OF KOREA; Leuze lumiflex GmbH + Co., Feurstenfeldbruck, GERMANY; Micro Motion, Inc., Boulder, CO; Invensys Process Systems, Foxboro, MA; Advanced Engineering, Inc., Franklin, TN; Schweitzer Engineering Laboratories, Pullman, WA; and Comtrol Corporation, Maple Grove, MN have been added as parties to this venture.

Also, Grayhill Inc., LaGrange, IL; Madison Cable Corporation, Worchester, MA; Dearborn Group, Inc., Farmington Hills, MI; Rice Lake Weighing Systems, Rice Lake, WI; Wittenstein Ternary Corporation, Nagano, JAPAN; Aera Corporation, Austin, TX; Pacific Scientific, Wilmington, MA; Baldor Electric, Fort Smith, AR; Tang & Associates, Selangor, MALAYSIA; TRS Fieldbus, Troy, MI; Denker, Auckland, NEW ZEALAND; EBARA Technologies, Inc., Sacramento, CA; E.O.A. Systems, Carrollton, TX; Com-Tec, Inc., Appleton, WI; Lantronix, Inc., Irvine, CA; Kojima Instruments, Inc., Kyoto, JAPAN; Celesco Transducer Products, Inc., Chatsworth, CA; and Northwire, Inc., Osceola, WI have been dropped as parties to this venture. The following member has changed its name: Moeller ElectroniX to Moeller GmbH, Detmold, GERMANY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open DeviceNet Vendor Association, Inc. intends to file additional written notification disclosing all changes in membership.

On June 21, 1995, Open DeviceNet Vendor Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on May 12, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2004 (69 FR 34405).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26624 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on October 18, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Electro Scientific Industries, Inc., Portland, OR; Hilevel Technology, Inc., Irvine, CA; Micro Component Technology, St. Paul, MN; Reid Ashman Manufacturing, St. George, UT; Salland Engineering International BV, Zwolle, THE NETHERLANDS; and Toshiba Corporation Semiconductor Company, Tokyo, JAPAN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on July 20, 2004. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on August 18, 2004 (69 FR 51329).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26614 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on October 8, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Microelectronics Research Institute ''PROGRESS'', Moscow, RUSSIA; and David Gardner (individual member), Round Rock, TX have been added as parties to this venture.

Also, Alcatel, Edegem, BELGIUM; Bob Altizer (individual member), Phoenix, AZ; Guy Bois (individual member), Montreal, Quebec, CANADA; Annette Bunker (individual member), Salt Lake City, UT; Ramesh Chandra (individual member), San Diego, CA; Edoardo Charbon (individual member), Berkeley, CA; Lee Dilley (individual member), Doylestown, PA; Dolphin Technology, San Jose, CA; GDA Technology, Karnatake, INDIA; Qun Ge (individual member), Shanghai, PEOPLE'S REPUBLIC OF CHINA; David Greenstein (individual member), Cupertino, CA; Carolyn Hayden, Ottawa, Ontario, CANADA; HD Labs, Yokohama, JAPAN; Robert Helt (individual member), Moraga, CA; IPTC Corporation, Yokohama, JAPAN; Gerald Keeler (individual member), San Francisco, CA; Alfred Kwok (individual member), San Jose, CA; Kun-Bin Lee (individual member), Hsinchu, TAIWAN; Samy Makar (individual member), Fremont, CA; Microelectronics Center of Harbin Institute of Technology, Harbin, PEOPLE'S REPUBLIC OF CHINA; Seijiro Moriyama (individual member), Kohoku-ku, JAPAN; Miodrag Potkonjak (individual member), Los Angeles, CA; Hardy Pottinger (individual member), Rolla, MO; Gang Qu (individual member), College Park, MD; Alberto Sangiovanni-Vincentelli (individual member), Berkeley, CA; Richard Stolzman (individual member), Campbell, CA; Patrick Sullivan (individual member), Palo Alto, CA; James Tobias (individual member), San Jose, CA; Kumar Venkatramani (individual member), Saratoga, CA; Joe Villella (individual member), Palo Alto, CA; and Kurt Woodland (individual member), Morgan Hill, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Aliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on July 12, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 18, 2004 (69 FR 51330).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–26617 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–259P]

Controlled Substances: Proposed Aggregate Production Quotas for 2005

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed year 2005 aggregate production quotas.

SUMMARY: This notice proposes initial year 2005 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before December 27, 2004.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–259P'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

The proposed year 2005 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2005 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

In determining the proposed year 2005 aggregate production quotas, the Deputy Administrator considered the following factors: total actual 2003 and estimated 2004 and 2005 net disposals of each substance by all manufacturers; estimates of 2004 year-end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories;

product development requirements of both bulk and finished dosage form manufacturers; projected demand as indicated by procurement quota applications filed pursuant to Section 1303.12 of Title 21 of the Code of Federal Regulations; and other pertinent information.

Pursuant to Section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2005, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2004 year-end inventory and actual 2004 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes that the year 2005 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class—Schedule I	Proposed year 2005 quotas
2,5-Dimethoxyamphetamine	2,801,000 g
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2 g
2,5-Dimethoxy-4-(n)-propylthiophenethylamine	10 g
3-Methylfentanyl	2 g
3-Methylthiofentanyl	2 g
3,4-Methylenedioxyamphetamine(MDA)	15 g
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	5 g
3,4-Methylenedioxymethamphetamine (MDMA)	15 g
3,4,5-Trimethoxyamphetamine	2 g
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2 g
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	2 g
4-Methoxyamphetamine	2 g
4-Methylaminorex	2 g
4-Methyl-2,5-dimethoxyamphetamine (DOM)	2 g
5-Methoxy-3,4-methylenedioxyamphetamine	2 g
5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)	10 g
Acetyl-alpha-methylfentanyl	2 g
Acetyldihydrocodeine	2 g
Acetylmethadol	2 g
Allylprodine	2 g
Alphacetylmethadol	2 g
Alpha-ethyltryptamine	2 g
Alphameprodine	2 g
Alphamethadol	3 g
Alpha-methyltryptamine (AMT)	10 g
Alpha-methylfentanyl	2 g
Alpha-methylthiofentanyl	2 g
Aminorex	2 g
Benzylmorphine	2 g
Betacetylmethadol	2 g
Beta-hydroxy-3-methylfentanyl	2 g
Beta-hydroxyfentanyl	2 g
Betameprodine	2 g
Betamethadol	2 g
Betaprodine	2 g
Bufotenine	2 g
Cathinone	2 g
Codeine-N-oxide	252 g
Diethyltryptamine	2 g
Difenoxin	5,000 g
Dihydromorphine	1,551,000 g
Dimethyltryptamine	3 g
Gamma-hydroxybutyric acid	8,000,000 g
Heroin	2 g
Hydromorphinol	2 g
Hydroxypethidine	2 g
Lysergic acid diethylamide (LSD)	60 g
Marihuana	840,020 g
Mescaline	2 g
Methaqualone	5 g
Methcathinone	4 g
Methyldihydromorphine	2 g
Morphine-N-oxide	252 g
N,N-Dimethylamphetamine	2 g
N-Ethylamphetamine	2 g
N-Hydroxy-3,4-methylenedioxyamphetamine	2 g
Noracymethadol	2 g
Norlevorphanol	52 g
Normethadone	2 g

Basic class—Schedule I	Proposed year 2005 quotas
Normorphine	12 g
Para-fluorofentanyl	2 g
Phenomorphan	2 g
Pholcodine	2 g
Propiram	50,000 g
Psilocybin	2 g
Psilocyn	7 g
Tetrahydrocannabinols	211,000 g
Thiofentanyl	2 g
Trimeperidine	2 g

Basic class—Schedule II	Proposed year 2005 quotas
1-Phenylcyclohexylamine	2 g
Alfentanil	2,500 g
Alphaprodine	2 g
Amobarbital	2 g
Amphetamine	12,700,000 g
Cocaine	228,000 g
Codeine (for sale)	39,605,000 g
Codeine (for conversion)	55,000,000 g
Dextropropoxyphene	167,365,000 g
Dihydrocodeine	748,000 g
Diphenoxylate	571,000 g
Ecgonine	53,000 g
Ethylmorphine	2 g
Fentanyl	1,428,000 g
Glutethimide	2 g
Hydrocodone (for sale)	37,604,000 g
Hydrocodone (for conversion)	g 1,500,000
Hydromorphone	1,951,000 g
Isomethadone	2 g
Levo-alphacetylmethadol (LAAM)	2 g
Levomethorphan	2 g
Levorphanol	5,000 g
Meperidine	9,753,000 g
Metazocine	1 g
Methadone (for sale)	13,900,000 g
Methadone Intermediate	18,000,000 g
Methamphetamine	2,782,000 g
[680,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,050,000 grams for methamphetamine mostly for conversion to a Schedule III product; and 52,000 grams for methamphetamine (for sale)]	
Methylphenidate	30,817,000 g
Morphine (for sale)	35,000,000 g
Morphine (for conversion)	110,774,000 g
Nabilone	2 g
Noroxymorphone (for sale)	1,002 g
Noroxymorphone (for conversion)	4,000,000 g
Opium	1,180,000 g
Oxycodone (for sale)	49,200,000 g
Oxycodone (for conversion)	920,000 g
Oxymorphone	534,000 g
Pentobarbital	18,251,000 g
Phencyclidine	2,006 g
Phenmetrazine	2 g
Racemethorphan	2 g
Secobarbital	2 g
Sufentanil	4,000 g
Thebaine	72,453,000 g

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the ''addresses'' section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy

Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $114,000,000 or more in any one year, and 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.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: November 30, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–26689 Filed 12–2–04; 8:45 am]

BILLING CODE 4410–09–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 the 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 their 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 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 the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Act'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modifed.

Volume I

Connecticut
- CT030001 (Jun. 13, 2003)
- CT030003 (Jun. 13, 2003)
- CT030004 (Jun. 13, 2003)
- CT030005 (Jun. 13, 2003)
- CT030008 (Jun. 13, 2003)

Maine
- ME030012 (Jun. 13, 2003)

New Hampshire
- NH030011 (Jun. 13, 2003)

New Jersey
- NJ030006 (Jun. 13, 2003)

New York

NY030001 (Jun. 13, 2003)
NY030003 (Jun. 13, 2003)
NY030011 (Jun. 13, 2003)
NY030013 (Jun. 13, 2003)
NY030018 (Jun. 13, 2003)
NY030020 (Jun. 13, 2003)
NY030023 (Jun. 13, 2003)
NY030026 (Jun. 13, 2003)
NY030029 (Jun. 13, 2003)
NY030031 (Jun. 13, 2003)
NY030032 (Jun. 13, 2003)
NY030034 (Jun. 13, 2003)
NY030036 (Jun. 13, 2003)
NY030066 (Jun. 13, 2003)
Rhode Island
RI030002 (Jun. 13, 2003)

Volume II

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MD030001 (Jun. 13, 2003)
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MD030058 (Jun. 13, 2003)
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IL030065 (Jun. 13, 2003)

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MO030015 (Jun. 13, 2003)
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New Mexico
NM030005 (Jun. 13, 2003)

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UT030029 (Jun. 13, 2003)
UT030030 (Jun. 13, 2003)
UT030032 (Jun. 13, 2003)
Washington
WA030002 (Jun. 13, 2003)
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WA030006 (Jun. 13, 2003)
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CA030029 (Jun. 13, 2003)
CA030030 (Jun. 13, 2003)
CA030031 (Jun. 13, 2003)
CA030032 (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 Web 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 24th day of November 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–26415 Filed 12–2–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of Labor-Management Standards

RIN 1215–AB50

Union Organization and Voting Rights: Criteria for Characterizing a Labor Organization as a ''Local,'' ''Intermediate,'' or ''National or International'' Labor Organization; Reopening and Extension of Comment Period

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

ACTION: Request for information from the public; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for comments on the request for information published on November 3, 2004 (69 FR 64234). That request for information invites the public to assist the Department of Labor (''Department'') in evaluating its methods for determining when a labor organization constitutes a ''local,'' ''intermediate'' or ''national or international'' labor organization for purposes of the Labor-Management Reporting and Disclosure Act of 1959, as amended (''Act''). The comment period, which was to expire on December 3, 2004, is reopened and extended 30 days to January 3, 2005.

DATES: Comments on the request for information published on November 3, 2004 (69 FR 64234) must be received on or before January 3, 2005.

ADDRESSES: You may submit comments, identified by RIN 1215–AB50, by any of the following methods:

E-mail: *OLMS-REG-1215-AB50@dol.gov.*

FAX: (202) 693–1340.

To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards (OLMS).

Mail: Mailed comments should be sent to Lary Yud, Deputy Director, Office of Labor-Management Standards,

U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, commenters should take this into consideration when preparing to meet the deadline for submitting comments.

It is recommended that you confirm receipt of your comment by calling (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 3, 2004, (69 FR 64234) the Department published a request for information from the public to assist the Department in evaluating its methods for determining when a labor organization constitutes a ''local,'' ''intermediate'' or ''national or international'' labor organization.

Interested persons were invited to submit comments on or before December 3, 2004. Because union members requested additional time to inform other members about the request for information and to submit comments, the Department has decided to reopen and extend the comment period for 30 days.

The complete request for information remains available on the OLMS Web site at *http://www.olms.dol.gov.* Anyone who is unable to access this information on the Internet can obtain a copy by contacting Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Signed at Washington, DC, this 29th day of November, 2004.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. 04–26612 Filed 12–2–04; 8:45 am]

BILLING CODE 4510–CP–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

November 30, 2004.

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, December 9, 2004, and Friday, December 10, 2004, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on December 9, and at 8:30 a.m. on December 10.

Topics for discussion include findings on a congressionally mandated study on specialty hospitals; pay for performance for hospitals, physicians, and home health; and incentives for health care information technology adoption. In addition, the Commission will discuss payment adequacy for hospitals, physicians, skilled nursing facilities, home health, and dialysis. Other topics will include imaging, measuring physician resource use, and other changes to physician payment.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (*http://www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 04–26667 Filed 12–2–04; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 20, 2004, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on November 18, 2004 to:

Julie Rose: Permit No. 2005–016.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–26626 Filed 12–2–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The Purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson, Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed 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. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meeting will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names

of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Website: *http://www.nsf.gov/home/pubinfo/advisory.htm*. This information may also be requested by telephoning (703) 292–8182.

Dated: November 29, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–26582 Filed 12–2–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33923]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Termination for ViroPharma, Incorporated's Facility in Exton, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Marjorie McLaughlin, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5240, fax (610) 337–5269; or by e-mail: *mmm3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is terminating Materials License No. 37–30241–01 issued to ViroPharma, Incorporated and authorizing release of its facility in Exton, Pennsylvania for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The license will be terminated following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's Exton, Pennsylvania facility for unrestricted use. ViroPharma, Incorporated was authorized by NRC from December 17, 1997, to use radioactive materials for research and development purposes at the site. On July 28, 2004, ViroPharma, Incorporated requested that NRC terminate the license and release the facility for unrestricted use. ViroPharma, Incorporated has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license termination. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by ViroPharma, Incorporated. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the request to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated ViroPharma, Incorporated's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The Environmental Assessment (ML043310216), and the letter dated July 28, 2004, requesting termination of the license (ML042230034). Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's Web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209, (301) 415–4737 or by e-mail to: *pdr@nrc.gov.*

These documents may be viewed electronically at the NRC Public Document Room (PDR), 0 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at King of Prussia, Pennsylvania this 26th day of November, 2004.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–26607 Filed 12–2–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 6, 2004:

A Closed Meeting will be held on Thursday, December 9, 2004 at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, December 9, 2004 will be:

Formal orders of investigations;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature; and
Amicus consideration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 29, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–26777 Filed 12–1–04; 3:53 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 50754]

Securities Exchange Act of 1934; Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption From Specified Provisions of Exchange Act Rules 13a–1 and 15d–1

November 30, 2004.

Starting with fiscal years ending on or after November 15, 2004, Commission rules require accelerated filers to include in their annual reports both a management report and auditor report on the effectiveness of a company's internal control over financial reporting. The Commission has become increasingly concerned that many smaller accelerated filers may not be in a position to meet that deadline. Accordingly, to ensure that there is a continuing and orderly flow of annual report information to investors and the U.S. capital markets, and to ensure that certain annual report filers and their registered public accounting firms are able to file complete and accurate reports regarding the effectiveness of the filers' internal control over financial reporting, the Commission has determined that the exemptions set forth below are necessary and appropriate in the public interest and consistent with the protection of investors.

Accordingly, *it is ordered*, pursuant to Section 36 of the Securities Exchange Act of 1934 (the ''Exchange Act''), that, under the conditions below, an accelerated filer (as defined in Exchange Act Rule 12b–2) that has a fiscal year ending between and including November 15, 2004 and February 28, 2005 is exempt from, and will therefore be in compliance with, the Exchange Act Rule 13a–1 or Rule 15d–1 requirement, as applicable, to include in its annual report within the 75 day period specified in Form 10–K both *Management's annual report on internal control over financial reporting*, required by Item 308(a) of Regulation S–K, and the related Attestation report of the registered public accounting firm, required by Item 308(b) of Regulation S–K.

Conditions

(a) The market value of the accelerated filer's outstanding common equity held by non-affiliates was less than $700 million at the end of its second fiscal quarter in 2004;[1]

(b) The accelerated filer files all of the information required to be included in the Form 10–K report within the 75 day period specified in the form (or within the extended period permitted by Exchange Act Rule 12b–25 if the accelerated filer has satisfied the conditions of that rule), including all of the information required by *Item 9A. Controls and Procedures*, except that: *Management's annual report on internal control over financial reporting*, required by Item 308(a) of Regulation S–K, and the related *Attestation report of the registered public accounting firm*, required by Item 308(b) of Regulation S–K, are not required to be filed;

(c) The accelerated filer identifies the information that it has not filed as permitted by paragraph (b) of these conditions;

(d) If the accelerated filer has identified a material weakness in its internal control over financial reporting, or the accelerated filer's registered public accounting firm has identified such a material weakness and communicated this finding to the accelerated filer, before the Form 10–K is filed as required by paragraph (b) of these conditions, the accelerated filer must disclose this information in the filing required by paragraph (b) of these conditions;

(e) The accelerated filer completes its Form 10–K by filing an amendment to the information required by paragraph (b) of these conditions not later than 45 days after the end of the 75 day filing period specified in Form 10–K (regardless of whether the accelerated filer relied on Exchange Act Rule 12b–25 to extend the 75 day filing period), to include the information that it did not file as permitted by paragraph (b) of these conditions;

(f) The accelerated filer may not rely on Exchange Act Rule 12b–25 to extend the deadline for the Form 10–K amendment described in paragraph (e) of these conditions; and

(g) For purposes of the Form S–2 and S–3 eligibility requirements, an accelerated filer relying on this exemption will not be considered to have timely filed its Form 10–K report until it has filed the Form 10–K amendment referenced in paragraph (e) of these conditions.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3455 Filed 12–2–04; 8:45 am]

BILLING CODE 8010–01–P

[1] This threshold is designed to ensure that the largest companies with the most active market following comply with the current deadline and to provide needed relief to smaller companies. We believe that the accelerated filers with the relevant fiscal year ends and public equity float thresholds exceeding $700 million, representing approximately 96% of the U.S. equity market capitalization, will be able to complete their internal control work by the existing Form 10–K deadline.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading

In the Matter of Asset Equity Group, Inc., GEMZ Corp., Household Direct, Inc., International Brands, Inc., Interspace Enterprises, Inc., Mega Micro Technologies Group, Inc., and Vertical Computer Systems, Inc.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of:

(1) Asset Equity Group, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 2001;

(2) GEMZ Corp.;

(3) Household Direct, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending March 31, 2002;

(4) International Brands, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 2000;

(5) Interspace Enterprises, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2002;

(6) Mega Micro Technologies Group, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 2000; and

(7) Vertical Computer Systems, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934 that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. e.s.t. on December 1, 2004, through 11:59 p.m. e.s.t. on December 14, 2004.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–26715 Filed 12–1–04; 11:48 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading

In the Matter of Abacan Resources Corp., Advanced Solutions and Technologies, Inc., American Multiplexer Corp., Amitelo Communications, Inc., Comparator Systems Corp., Digi Link Technologies, Inc., DMT Energy, Inc., DrKoop.Com, Inc. Emerging Enterprise Solutions, Inc., Homeland Security Technology, Inc., First Pacific Networks, Inc., Heroes, Inc., Infotopia, Inc., JTS Corp., 1st Miracle Entertainment, Inc., Shaman Pharmaceuticals, Inc., United States Crude International, Inc., Webvan Group, Inc., and Whitehall Enterprises, Inc.;

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of:

(1) Abacan Resources Corp. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 (''Exchange Act'') since the period ending September 30, 1999;

(2) Advanced Solutions and Technologies, Inc. (F/k/a Indexonly Technologies, Inc.) because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2000;

(3) American Multiplexer Corp. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2000;

(4) Amitelo Communications, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 1995;

(5) Comparator Systems Corp. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 1997;

(6) Digi Link Technologies, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending June 30, 2001;

(7) DMT Energy, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending November 30, 1999;

(8) DrKoop.Com, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2001;

(9) Emerging Enterprise Solutions, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending March 31, 2000;

(10) Homeland Security Technology, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the registration of its securities became effective on May 26, 1998;

(11) First Pacific Networks, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 1996;

(12) Heroes, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2002;

(13) Infotopia, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2001;

(14) JTS Corp. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending November 2, 1997;

(15) 1st Miracle Entertainment, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending January 31, 2002;

(16) Shaman Pharmaceuticals, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending March 31, 2001;

(17) United States Crude International, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 2000;

(18) Webvan Group, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending March 31, 2001; and,

(19) Whitehall Enterprises, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending June 30, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. e.s.t. on December 1, 2004, through 11:59 p.m. e.s.t. on December 14, 2004.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–26716 Filed 12–1–04; 11:48 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50713; File No. SR–NASD–98–74]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change as Amended and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 by the National Association of Securities Dealers, Inc., Regarding NASD Rule 3110(f) Governing Predispute Arbitration Agreements With Customers

November 22, 2004.

I. Introduction

On October 6, 1998, the National Association of Securities Dealers (''NASD'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder to amend NASD Rule 3110(f) governing predispute arbitration agreements.[2] Notice of the proposal, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on November 29, 1999.[3] The Commission received two comment letters on the proposed rule change.[4] On April 30, 2002, NASD submitted a Response to Comments and Amendment No. 3 to the proposed rule change. On August 22, 2003, NASD filed Amendment No. 4 to the proposal, which replaced in its entirety the prior filings and amendments, except for the Response to Comments contained in Amendment No. 3. Notice of the proposal, as amended by Amendment Nos. 3 and 4, was published in the **Federal Register** on September 12, 2003.[5] The Commission received 24 comment letters on Amendment Nos. 3 and 4.[6] On January 9, 2004, NASD submitted a Response to Comments and Amendment No. 5 to the proposed rule change.[7] This order approves the proposed rule change, grants accelerated approval to Amendment No. 5, and solicits comments from interested persons on Amendment No. 5.

II. Description of the Proposal

A. Background

1. Purpose and General Description of Proposal

The proposed rule change is intended to increase the disclosure required in predispute arbitration agreements. Many broker-dealers require that customers seeking to open accounts, particularly margin and option accounts or accounts with a checking or money market feature, agree in writing to arbitrate disputes concerning the account, typically in an SRO-sponsored forum. These agreements, called ''predispute arbitration agreements,'' are generally part of the non-negotiated customer agreement drafted by the firm.

To ensure that customers are advised about what they are agreeing to when they sign predispute arbitration agreements, NASD Rule 3110(f) requires that such agreements contain highlighted disclosure about differences between arbitration and litigation, including notice that by agreeing to arbitrate their disputes, customers may be waiving certain rights that would be available in court. NASD Rule 3110(f) also requires that the agreement itself be highlighted, and that a copy of the agreement be given to the customer and acknowledged by the customer in writing.

Despite these precautions, investor representatives have expressed concern that many customers who sign predispute arbitration agreements still do not understand adequately what they are agreeing to. Customers' perceptions of unfairness are heightened by the fact that, in order to open an account, they are forced to agree to SRO-sponsored arbitration.

Consequently, the Arbitration Task Force, chaired by David Ruder (formerly Chairman of the SEC and a former NASD Board member), recommended in its 1996 report, Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors, National Association of Securities Dealers, Inc. (''Ruder Task Force Report''), that members be required to provide more disclosure about arbitration to customers who sign predispute arbitration agreements, and that the use of certain provisions that limit rights and remedies be restricted.

Thus, NASD proposes to amend NASD Rule 3110(f) regarding predispute arbitration agreements (i) to require additional disclosure in predispute arbitration agreements about the arbitration process, including possible limits on eligibility of claims; (ii) to require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; (iii) to provide explicitly that the rules of the arbitration forum in which the claim is filed are incorporated into the predispute arbitration agreement; and (iv) to require members seeking to compel arbitration of claims initiated in court to arbitrate all of the claims contained in the complaint if the customer so requests.

2. General Comments on the Proposed Rule Change

In 1999, the Commission received two comment letters on the proposal, as amended by Amendment Nos. 1 and 2.[8] In 2003, the Commission received 24 comment letters on the proposal, as amended by Amendment Nos. 3 and 4.[9] Several commenters applauded the proposed rule change as an effort to help investors understand the consequences of signing predispute arbitration agreements. The majority of commenters, however, opposed Proposed Rule 3110(f)(4)(B), relating to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–42160 (November 19, 1999), 64 FR 66681 (November 29, 1999).

[4] *See* letters from Barry D. Estell, dated December 15, 1999 (''Estell Letter''), and John J. Miller, dated December 27, 1999 (''Miller Letter'').

[5] *See* Release No. 34–48444 (September 4, 2003), 68 FR 53762 (September 12, 2003).

[6] *See* letters from Al Van Kampen, Rohde & Van Kampen, dated October 11, 2003; Barbara Black and Jill I. Gross, Pace Investor Rights Project, Pace University School of Law, dated October 2, 2003 (''Pace Letter''); Carl J. Carlson, Carlson & Fabish, P.S., dated October 5, 2003; Daniel A. Ball, Selzer, Gurvitch, Rabin, Obecny, dated October 3, 2003; Don K. Leufven, dated October 9, 2003; Donald G. McGrath, McGrath & Polvino, PLLC, dated October 3, 2003; H. Douglas Powell, Fishkind & Associates, Inc., dated October 6, 2003; Herb Pounds, Herbert E. Pounds, Jr., P.C., dated October 6, 2003; J. Pat Sadler, Public Investors' Arbitration Bar Association, dated October 2, 2003; Jeffrey A. Feldman, Esquire, dated October 6, 2003; John Miller, Law Office of John L. Miller, P.C., dated October 5, 2003; Jorge A. Lopez, Esquire, Jorge A. Lopez, P.A., dated October 5, 2003; Kari S. Turigliatto, Mutual Service Corporation, dated October 8, 2003; Kenneth A. Martyn, Attorney at Law, dated October 8, 2003; Laurence S. Schultz, Driggers, Schultz & Herbst, P.C., dated October 3, 2003; Lenny Steiner, dated October 4, 2003; Madelaine Eppenstein and Theodore G. Eppenstein, Eppenstein and Eppenstein, dated October 3, 2003; Ralph A. Lambiase, North American Securities Administrators Association, Inc., dated October 3, 2003; Richard M. Layne, Layne & Lewis LLP, dated October 2, 2003; Robert S. Banks, Jr., Banks Law Office, P.C., dated October 3, 2003; Rosemary J. Shockman, Shockman Law Office, P.C., dated October 2, 2003; Scott C. Iigenfritz, Johnson, Pope, Bokor, Ruppel & Burns, P.A., dated October 16, 2003; Steve Buchwalter, Law Offices of Steve A. Buchwalter, P.C., dated October 3, 2003; and Tracy Pride Stoneman, Tracy Pride Stoneman, P.C., dated October 3, 2003.

[7] *See* letter from Kosha Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated January 9, 2004 (''Amendment No. 5'').

[8] *See* Estell Letter and Miller Letter, *supra* note 4.

[9] *See supra* note 6.

the use of choice-of-law provisions. In response to these comments, NASD is amending the proposed rule change to withdraw Proposed Rule 3110(f)(4)(B), for the reasons explained below in Section II.

F. Restrictions on Provisions That Limit Rights and Remedies

Finally, one commenter criticized the proposed rule change for not permitting customers to opt out of predispute arbitration agreements in cases involving securities fraud, and for failing to eliminate the requirement that one non-public arbitrator serve on three-arbitrator panels, as required by NASD Rule 10308.[10] NASD responded that these concerns, while noted, are outside the scope of the proposed rule filing.

B. Required Disclosure and Notice of Possible Restrictions on Eligibility

Currently, disclosure language about the differences between litigation and arbitration must be included in predispute arbitration agreements.[11] NASD proposes to clarify existing disclosures and to require new disclosure that (i) the rules of some arbitration forums may impose time limits for bringing claims in arbitration; and (ii) in some cases, claims that are ineligible for arbitration may be brought in court.[12]

Under the proposal, members would be required to add the new disclosure requirements to all new customer account agreements containing predispute arbitration agreements as of the effective date of the rule. Accordingly, the proposed rule would not require members to replace existing agreements with current customers.[13]

C. Incorporation of Arbitration Forum Rules

The proposal provides that the rules of the arbitration forum in which a claim is brought, and any amendments thereto, are incorporated into the parties' agreement and are enforceable, as are other provisions of the arbitration contract.[14] This provision should ensure that the rules of a forum apply to cases brought in that forum and eliminate the need to execute new agreements each time a forum changes its rules. Accordingly, if a customer files a complaint in an NASD arbitration forum, NASD's arbitration rules would apply in all respects to the agreement.

D. Acknowledgement of Predispute Arbitration Clause

NASD Rule 3110(f) currently requires that (i) predispute arbitration agreements contain a highlighted statement indicating that the agreement contains an arbitration clause and specifying at what page and paragraph the arbitration clause is located; and (ii) a copy of the predispute arbitration agreement be provided to the customer, who must acknowledge receipt of the agreement in writing, either on the agreement itself or on a separate document. Proposed Rule 3110(f)(2)(B) would amend the current rule to require that delivery and customer acknowledgement of the agreement take place at the time of signing.

E. Requirement That Members Provide Copies of Customer Agreements and Information Regarding Arbitration Forums to Customers Upon Request: Proposal and Comments Received

Proposed Rule 3110(f)(3)(A) would require members, within ten days of receiving a customer request, either to provide the customer with a copy of any predispute arbitration agreement clause or agreement that the customer had signed, or inform the customer that the member does not have a copy of the agreement.[15] In addition, the proposal would require that, upon request of a customer, a member must provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.[16]

One commenter interpreted the phrase ''or inform the customer that the member does not have a copy thereof'' in Proposed Rule (f)(3)(A) to refer to a situation in which there is no predispute arbitration agreement between the customer and firm.[17] NASD stated that, in fact, Proposed Rule 3110(f)(3)(A) is intended to address a situation in which a customer agreement or predispute arbitration agreement has been executed, but the firm is for some reason unwilling or unable to produce a copy to the customer. Current Rule 3110(f)(3) requires that copies of any predispute arbitration agreement be given to the customer, who must acknowledge receipt thereof. NASD has become aware, however, that members generally provide copies of such agreements at the time the agreement is signed, but sometimes refuse or are unable to do so after a dispute has arisen. Thus, Proposed Rule 3110(f)(A)(3) requires members to produce customer account or predispute arbitration agreements upon the request of the customer. NASD expects that members will retain such agreements, as required by NASD rules. However, if for some reason, whether through an act of nature, human error, or otherwise, a member is unable to comply with the customer's request, NASD proposes to require members to inform the customer of that fact, rather than simply failing to respond to the customer's request.

F. Restrictions on Provisions That Limit Rights and Remedies

Proposed Rule 3110(f)(4)(A) clarifies the prohibition against provisions in predispute arbitration agreements that limit rights or remedies, including provisions that would circumvent NASD's eligibility rule proposal, as amended.[18] In particular, the proposal would provide that predispute arbitration agreements may not include any condition that would: (i) Limit or contradict the rules of any self-regulatory organization (''SRO''); (ii) limit the ability of a party to file any claim in arbitration; (iii) limit the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement; or (iv) limit the ability of arbitrators to make any award.[19]

NASD initially proposed to amend Rule 3110(f)(4) to include paragraph (f)(4)(B), which would state that no choice-of-law provision would be enforceable unless there is a significant contact or relationship between the law selected and either the transaction at issue or one or more of the parties. NASD had proposed paragraph (f)(4)(B) in response to the recommendation of the Ruder Task Force Report and with the purpose of protecting investors from the use of arbitrary choice of law provisions. This would make explicit NASD's interpretation of current Rule 3110(f)(4) to require that, when predispute arbitration agreements between members and customers

[10] *See* letter from Madelaine Eppenstein and Theodore G. Eppenstein, Eppenstein and Eppenstein, dated October 3, 2003.

[11] *See* NASD Rule 3110(f)(1).

[12] *See* Proposed Rule 3110(f)(1)(F). In a companion rule filing approved by the Commission today, NASD is amending its rule pertaining to time limits for bringing claims in arbitration (NASD Rule 10304), to provide explicitly that arbitrators, rather than the courts, determine the eligibility of claims, and that a party requesting dismissal of a claim on eligibility grounds in an NASD forum agrees that the party that filed the dismissed claim may withdraw all related claims without prejudice and may pursue all of the claims in court. *See* Release No. 34–50714 (November 22, 2004) (order approving amendments to Rule 10304).

[13] *See* Proposed Rule 3110(f)(7).

[14] *See* Proposed Rule 3110(f)(1)(G).

[15] *See* Proposed Rule 3110(f)(3)(A).

[16] *See* Proposed Rule 3110(f)(3)(B).

[17] *See* Pace Letter *supra* note 6.

[18] *See supra* note 12.

[19] *See* Proposed Rule 3110(f)(4)(A).

include a choice-of-law provision, there must be ''an appropriate contact or relationship between the transaction at issue or the parties and the law selected.'' [20] As explained more fully below, however, NASD has withdrawn proposed paragraph (f)(4)(B) in response to comments, but continues to caution its members against overreaching in choice of law provisions.

Although one commenter generally supported proposed paragraph 3110(f)(4)(B),[21] the overwhelming majority of commenters opposed it as potentially harmful to investors. A majority of the commenters argued that, because relevant case law regarding choice-of-law provisions in predispute arbitration agreements has evolved considerably in the five years since the proposed rule change was filed, proposed paragraph (f)(4)(B) could be interpreted to endorse choice-of-law clauses that may not be enforceable under applicable state law. Two commenters suggested that members might use paragraph (f)(4)(B) to legitimize choice-of-law clauses that would override the protection of customers' home state blue sky laws.[22] Given the strong opposition of most commenters and the fact that such adverse consequences were not intended by NASD, NASD is withdrawing proposed paragraph (f)(4)(B). However, by doing so, NASD is not implying that members may include arbitrary choice-of-law provisions in predispute arbitration agreements with customers. As it has in the past, NASD will continue to interpret NASD Rule 3110(f) to require that, if a choice-of-law provision is used, there must be an adequate nexus between the law chosen and the transaction or parties at issue in accordance with NASD Notices to Members 95–85 and 95–16.[23]

G. Non-Bifurcation Provision

NASD proposes to require members seeking to compel arbitration of claims filed in court to agree to arbitrate all of the claims contained in the complaint if the customer requests, even if some of the claims would be ineligible for arbitration under the eligibility rule.[24]

In a companion filing, NASD proposes to provide that by requesting dismissal of a claim on eligibility grounds in the NASD forum, the requesting party is agreeing that the party that filed the dismissed claim may withdraw all related claims without prejudice and may pursue all of the claims in court.[25] NASD represents that this provision would protect parties against involuntary bifurcation of claims.[26]

H. Effective Date Provisions

The proposed amendments to NASD Rule 3110(f) would require various changes to the customer agreements used by NASD member firms. In order to provide enough time for firms to modify customer agreements, the proposed rule change would take effect 90 days after NASD publishes a *Notice to Members* to announce Commission approval of the proposal. Moreover, NASD would issue such *Notice to Members* within 60 days of publication of the Commission's approval of the proposed rule change in the **Federal Register**.

The proposed amendments to NASD Rule 3110(f) would also provide that agreements signed before the effective date of the rule, as amended, would be subject to the provisions of NASD Rule 3110(f) in effect at the time the agreement was signed, except with regard to the provisions of subparagraph (f)(3) of the proposed rule change.[27]

III. Discussion and Commission Findings

Currently, NASD Rule 3110(f) requires that predispute arbitration agreements contain highlighted disclosure about differences between arbitration and litigation, including notice that by agreeing to arbitrate their disputes, customers may be waiving certain rights that would be available in court. Further, NASD Rule 3110(f) provides that its members must highlight the agreement and provide a copy of the agreement to the customer, which the customer acknowledges in writing.

The Commission notes that despite the disclosure requirements under the current rule, NASD has determined that there are continuing concerns about whether customers who become parties to predispute arbitration agreements adequately understand the terms of the agreement. NASD has concluded that it is necessary to require its members to provide more disclosure about arbitration to customers who sign predispute arbitration agreements, and that the use of certain provisions that limit rights and remedies should be restricted.[28] Accordingly, NASD submitted the proposed amendments to NASD Rule 3110(f) to address these concerns.

The Commission believes that the proposal should provide customers with clearer and enhanced disclosure regarding the terms of predispute arbitration agreements. The Commission believes that the proposed rule change incorporates important protections into the text of the arbitration agreement itself, including the rules of the SRO in which the arbitration takes place. This will permit better guidance to the parties, arbitrators, and the courts. Moreover, the proposed requirement that a member either provide a customer with the predispute arbitration agreement or inform the customer that the member does not have a copy within ten days, as well as provide the customer with information on how to obtain the rules of the arbitration forums in which a claim may be filed under the agreement, should help to protect investors and facilitate the dispute resolution process.

The Commission also notes that the proposal provides that if the member seeks to compel arbitration of claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer requests. The Commission believes that the proposed rule change should benefit investors by preventing customers from being forced to bifurcate their claims. The proposed rule change, together with Rule 10304, as amended, addresses the concern that parties would be forced to litigate in two forums; limits the potential litigation strategies that could escalate the costs of and thereby impede dispute resolution; and eliminates the particular litigation strategy, never contemplated under NASD rules, of so-called ''election of remedies,'' which foreclosed some investors' access to justice altogether.

Finally, the Commission notes the concerns raised by commenters regarding the proposed choice-of-law provision.[29] The Commission, believes that NASD's response in withdrawing paragraph 3110(f)(4)(B) is consistent with the Act, and that that Proposed Rule 3110(f)(4)(A) achieves an appropriate balance between the interests of investors and the ability of parties to agree contractually to fair terms that would govern their

[20] NASD *Notice to Members* 95–85 (October 16, 1995); *see also* NASD *Notice to Members 95–16.*

[21] *See* Pace Letter, *supra* note 6.

[22] *See* Estell Letter and Miller Letter, *supra* note 4.

[23] *See supra* note 20.

[24] *See* Proposed Rule 3110(f)(5).

[25] *See supra* note 12.

[26] *Id.*

[27] *See* Proposed Rule 3110(f)(7).

[28] In formulating its proposal, NASD referred to the work of its Arbitration Policy Task Force, chaired by David Ruder. *See supra* text 0, 1. Purpose and General Description of Proposal.

[29] *See supra* text 0, Restrictions on Provisions that Limit Rights and Remedies.

disputes,[30] especially as explained in NASD Notice to Members 95–85.[31]

The Commission notes that NASD will publish a *Notice to Members* within 60 days of receiving Commission approval of the proposed rule change. The effective date of the proposed rule change will be 90 days after the publication of the *Notice to Members.*

After careful review, the Commission finds that the proposal is consistent with the requirements of Section 15A of the Act[32] and the rules and regulations thereunder that govern NASD.[33] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act[34] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

IV. Accelerated Approval of Amendment No. 5

The Commission believes that there is good cause for approving Amendment No. 5 prior to the 30th day after publication in the **Federal Register**. Amendment No. 5 responds to comments by withdrawing Proposed Rule 3110(f)(4)(B). Accelerated approval of Amendment No. 5 will enable NASD to announce promptly the final rules, in conjunction with those being approved today in a companion filing, SR–NASD–2003–101, which changes would be incorporated by Proposed Rule 3110(f) into any predispute arbitration agreement governing proceedings held in a NASD forum. Concurrent approval of Amendment No. 5 and SR–NASD–2003–101 will lessen member confusion as to the final requirements of both rule filings, allow their effective dates to be the same, and thereby permit members to make the necessary changes to comply with them in a timely fashion.[35]

Based on the above, the Commission finds good cause, consistent with section 15A(b)(6) and section 19(b)(2) of the Act, for approving Amendment No. 5 prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning whether proposed Amendment No. 5 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–98–74 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–98–74. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–98–74 and should be submitted on or before December 27, 2004.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NASD–98–74), as amended, is hereby approved, and Amendment No. 5 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3450 Filed 12–2–04; 8:45 am]

BILLING CODE 8010–01–P

[30] The Supreme Court ruled in 1995 that the choice of law provision in the customer agreement before the Court did not have the effect of barring arbitrators from barring punitive damages. *Mastrobuono* v. *Shearson Lehman Hutton, Inc.,* 514 U.S. 52 (1995). Rule 3110(f)(4) explicitly forbids broker-dealers from using any term of an agreement to limit such relief.

[31] *See supra* note 20.

[32] 15 U.S.C. 78*o*–3.

[33] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78*o*–3(b)(6).

[35] The Commission further notes that both rule filings and amendments thereto have been available since their respective filing dates on *http://www.nasdadr.com.*

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50741; File No. SR–NASD–2004–142]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Establish Fees for Companies With a Dual Listing on the New York Stock Exchange and Nasdaq

November 29, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On November 12, 2004, Nasdaq amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to adopt a fee schedule for issuers that are dually listed on the New York Stock Exchange (the ''NYSE'') and Nasdaq. Should the Commission approve the proposed rule change, Nasdaq will implement the proposed rule change immediately.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1 replaced and superseded the original filing in its entirety.

The text of the proposed rule change is below. Proposed new language is in italics.[4]

4510. The Nasdaq National Market

(a) Entry Fee

(1)–(5) No change.

(6) Reserved.

(7) The fees described in this Rule 4510(a) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(b) Additional Shares

(1)–(4) No change.

(5) The fees described in this Rule 4510(b) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(c) Annual Fee—Domestic and Foreign Issues

(1)–(4) No change.

(5) In lieu of the fees described in Rule 4510(c)(1), the annual fee shall be $15,000 for each issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the issuer's listing on Nasdaq.

(d)–(e) No change.

4520. The Nasdaq SmallCap Market

(a) Entry Fee

(1)–(5) No change.

(6) Reserved.

(7) The fees described in this Rule 4520(a) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(b) Additional Shares

(1)–(4) No change.

(5) The fees described in this Rule 4520(b) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(c) Annual Fee

(1)–(4) No change.

(5) In lieu of the fees described in Rule 4510(c)(1), the annual fee shall be $15,000 for each issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the issuer's listing on Nasdaq.

(d) No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

During 2004, following the repeal of the NYSE's Rule 500,[5] Nasdaq established a dual listing program for securities listed on the NYSE. Nasdaq had long advocated the repeal of NYSE Rule 500, in favor of a competitive environment in which significant barriers to listing transfers do not exist and listed companies can move quickly and easily to the market that best suits their needs. In recognition of the fact that a change in listing venue is a major step for any issuer, however, Nasdaq's dual listing program is designed to allow issuers to undertake a focused comparison of the services and market quality offered by Nasdaq and the NYSE. The explicit goal of the program, however, is to encourage the eventual switch of companies that dual list.

To facilitate the program, Nasdaq filed with the Commission on January 12, 2004, an interpretation of its rules (NASD IM–4500–3) that waived, for a one-year period, the entry fees, annual fees, and listing of additional shares fees due under Nasdaq rules for any NYSE issuer that dually listed on Nasdaq, or switched to Nasdaq, between January 12, 2004, and December 31, 2004.[6] With the instant proposed rule change, Nasdaq now proposes to establish a fee schedule for those NYSE issuers that remain dually listed after that one-year period, and for NYSE issuers that dually list after December 31, 2004. Nasdaq proposes to apply this schedule to any issuer that adds a dual listing on Nasdaq while remaining listed on the NYSE.

Under the proposed fee schedule, the issuer of a dually listed security would not be subject to entry and application fees, which otherwise would range from $25,000 to $50,000 on The Nasdaq SmallCap Market and from $100,000 to $150,000 on the Nasdaq National Market. These issuers also would not be subject to the fee for listing additional shares, which is otherwise $2,500 or $0.01 per additional share, whichever is higher, up to an annual maximum of $45,000 per issuer.[7] Finally, a dually listed issuer would not pay an annual fee until the end of its first year on Nasdaq, at which time the annual fee

[4] Changes are marked to the rule text that appears in the electronic NASD Manual found at *www.nasd.com*. Nasdaq notes, however, that it has recently submitted SR–NASD–2004–140 (September 20, 2004), a proposed rule change that would adopt Rules 4510(a)(6) and 4520(a)(6). Accordingly, those provisions have been marked as ''Reserved'' in the rule text. *See* Securities Exchange Act Release No. 50740, November 29, 2004.

[5] *See* Securities Exchange Act Release No. 48720 (October 30, 2003), 68 FR 62645 (November 5, 2003) (SR–NYSE–2003–23).

[6] Securities Exchange Act Release No. 49286 (February 19, 2004), 69 FR 8999 (February 26, 2004) (SR–NASD–2004–04).

[7] Issuances of up to 49,999 additional shares per quarter are not subject to the Additional Shares fee.

would be $15,000.[8] Nasdaq believes that without a remission of these fees, companies that may be interested in comparing Nasdaq and the NYSE through a dual listing would nevertheless be forced to weigh the potential benefits against a requirement to duplicate the fees that they have paid and continue to pay to the NYSE. Nasdaq believes that in effect, NYSE Rule 500 would have been replaced with a burden on a Nasdaq listing imposed by Nasdaq itself. Nasdaq believes that by promoting a comparison of markets through dual listing, a waiver of these fees will enhance fair competition between exchange markets and markets other than exchange markets, consistent with section 11A(a)(1)(C)(ii) of the Act,[9] to the benefit of the investing public.

Nasdaq also believes that the proposed remission of the entry fee is justified from the standpoint of Nasdaq's experience with regard to the time and effort required to review applications of issuers that are already listed on an exchange. Although companies that dually list are reviewed for compliance with Nasdaq listing standards in the same manner as any other company applying for listing on Nasdaq, Nasdaq believes that the average application of a dually listing issuer is less likely to involve time-consuming regulatory issues than the average application from a company conducting an initial public offering or transferring from the over-the-counter market. This is, in part, due to the ongoing scheme of regulation to which such issuers have been subject. Moreover, because such companies are already familiar with the standards of conduct imposed upon public companies by listing markets, their applications are generally presented with a high degree of completeness and accuracy. Finally, and most significant, because such companies already satisfy the listing standards of the NYSE, there is a very high likelihood that they also comply with Nasdaq's listing standards. Thus, although Nasdaq always conducts a full and independent review of each issuer's compliance, and will continue to do so with respect to issuers that dually list, the probability that an issuer seeking to dually list will be found not in compliance and therefore denied access to a Nasdaq listing is low. As a result, the probability that Nasdaq staff will be required to devote time and effort to establish a sufficient record to support a decision to deny listing and to defend such a denial against appeal under the Rule 4800 Series is also low. By contrast, when an applicant is denied a listing, Nasdaq receives only a $5,000 application fee, but must frequently devote significant resources to defending its decision.

The proposed fee schedule would require an issuer of dually listed securities to pay an annual listing fee of $15,000, instead of the annual fee otherwise due. In the case of an issuer that was eligible for a waiver under NASD IM–4500–3, this annual fee will be assessed on the anniversary of the issuer's Nasdaq listing. In the case of subsequent issuers that add a dual listing, the fee will be assessed on the anniversary of the issuer's listing on Nasdaq. Accordingly, issuers that opt to dual list will have a one-year period to assess the benefits of the dual listing before the fee is assessed.

Although, as noted above, the goal of the dual-listing program is to encourage switches to Nasdaq after one year, some issuers may feel that they need more than one year to evaluate the two markets, or that they benefit from maintaining a dual listing that encourages ongoing competition between Nasdaq and the NYSE. In that case, Nasdaq believes it would be inequitable to charge dually listed issuers the full annual fee or the fee for listing additional shares, as they are also paying these fees to the NYSE. Nevertheless, Nasdaq believes that in such circumstances, the collection of a reduced annual fee is warranted to support the ongoing cost of issuer services, including regulatory oversight, and to fund future product and service investments.

Nasdaq believes that imposing lower fees on dually listed issuers is equitable in light of the issuers' ongoing payment of fees to the NYSE and the ongoing role of the NYSE as the primary market for such issuers. Nasdaq's fee schedule and the fee schedules of other self-regulatory organizations assess varying levels of fees on issuers based on reasoned assessments of the issuers' varying circumstances.[10] For example, both entry fees and annual fees are assessed on a sliding scale that uses total shares outstanding and the issuer's market tier (*i.e.*, Nasdaq National Market or SmallCap Market) as a corollary to the complexity of reviewing each issuer's compliance with listing standards and each issuer's ability to pay. Inevitably, the use of such a scale means that different issuers pay different amounts for their listing on Nasdaq. Similarly, non-U.S. issuers listing American Depositary Receipts (''ADRs'') on Nasdaq are subject to a lower annual fee than domestic issuers due, in part, to the fact that Nasdaq is typically a secondary market for these issuers' securities. Nasdaq believes that the lower fees for ADRs are directly analogous to the proposed lower fees for dually listed companies. Moreover, Nasdaq notes that certain functions required to oversee companies that are solely listed on Nasdaq are not necessary with respect to dually listed issuers. Specifically, Nasdaq's Market Watch group, which ordinarily reviews news releases for material news and makes determinations as to whether to halt trading pending news dissemination, defers to the NYSE on those matters regarding dually listed issuers. In addition, notifications for dividends and stock splits, or changes to the underlying security or symbol, are not required to be provided to Nasdaq as they would be in the case of issuers that are not dually listed. Finally, Nasdaq believes issuers that become dually listed voluntarily undertake a second set of regulations and therefore demonstrate their commitment to regulatory excellence. Although Nasdaq subjects dually listed companies to the same degree of regulatory scrutiny applicable to solely listed issuers, Nasdaq expects that companies of this type will raise fewer regulatory issues and therefore will require less staff time on an ongoing basis.

It should also be noted that the trading of dually listed stocks remains subject to the restrictions of the Intermarket Trading System plan. Moreover, dually listed issuers are not eligible for inclusion in indices maintained by Nasdaq, and their stock is therefore not held by index products and funds based upon such indices.

Nasdaq does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from dually listed companies that eventually switch to Nasdaq or in terms of diminished entry or annual fees of companies that

[8] On August 25, 2004, Nasdaq proposed to modify the annual fee for issuers listed on the Nasdaq Stock Market. *See* Securities Exchange Act Release No. 50577 (October 21, 2004), 69 FR 62926 (October 28, 2004) (SR–NASD–2004–128). Under this proposal, annual fees for SmallCap Market issuers would range from $17,500 to $21,000 and annual fees for National Market issuers would range from $24,500 to $75,000. Nasdaq has proposed that these revised fees be effective January 1, 2005 for issuers currently listed on The Nasdaq Stock Market.

[9] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[10] Nasdaq notes that the Commission has previously approved reduced fees for securities that are dually listed on the Pacific Exchange, finding that ''reduced fees are appropriate and reasonable because the costs incident to maintaining exclusive issues are greater than costs incident to maintaining dually listed issues.'' *See* Securities Exchange Act Release No. 40395 (September 3, 1998), 63 FR 48774 (September 11, 1998) (SR–PCX–98–32).

maintain a dual listing. Quite simply, even with the proposed rule change in place, Nasdaq understands that a change in listing venue, either through a switch or a dual listing, is a major step for an issuer, and therefore Nasdaq does not expect that the number of dually listed issuers in a given time frame will be sufficient to have a material effect on financial resources. Accordingly, the proposed rule change will not impact Nasdaq's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general, and with sections 15A(b)(5) and 15A(b)(6) of the Act,[12] in particular, in that it is designed to provide an equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. As discussed above, Nasdaq believes that this proposal is an equitable allocation of reasonable fees because dually listed companies would pay annual fees, but such fees would be reduced in recognition of the fact that the issuer is also paying listing fees to another market and that certain services offered by Nasdaq would be duplicative of services already received from the other market. In addition, as noted above, Nasdaq believes that the proposed rule change is consistent with the provisions of section 11A(a)(1)(C)(ii) of the Act [13] in that it is designed to promote fair competition between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, Nasdaq believes that the proposed rule change will enhance competition by allowing issuers that are listed on the NYSE to add a listing on Nasdaq without being required to pay fees that are duplicative of fees already paid to the NYSE.

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(5) and (6).

[13] 15 U.S.C. 78k–1(a)(1)(C)(ii).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–142 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–142. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–142 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3451 Filed 12–2–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50740; File No. SR–NASD–2004–140]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Eliminate Entry and Application Fees for Exchange-Listed Issuers Transferring Listings to Nasdaq

November 29, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. On November 12, 2004, Nasdaq amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1 replaced and superseded the original filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to eliminate the entry and application fees imposed upon issuers listed on a national securities exchange that transfer their listing to Nasdaq. Nasdaq will make the proposed rule change effective retroactively for any issuer listing on Nasdaq on or after September 20, 2004 (the date Nasdaq originally filed this proposal with the Commission). Accordingly, an issuer that switches its listing to Nasdaq between September 20, 2004 and such date as Commission approval of the filing may occur would receive a refund of the entry and application fee paid.

The text of the proposed rule change is below. Proposed new language is in italics.[4]

4510. The Nasdaq National Market

(a) Entry Fee

(1)–(5) No change.

(6) The fees described in this Rule 4510(a) shall not be applicable to any issuer that is listed on a national securities exchange and that transfers its listing to the Nasdaq National Market.

(b)–(e) No change.

4520. The Nasdaq SmallCap Market

(a) Entry Fee

(1)–(5) No change.

(6) The fees described in this Rule 4520(a) shall not be applicable to any issuer that is listed on a national securities exchange and that transfers its listing to the Nasdaq SmallCap Market.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to eliminate the entry and application fees under NASD Rules 4510(a) and 4520(a) for any company listed on a national securities exchange (an ''exchange'') that transfers its listing to the Nasdaq National Market or the Nasdaq SmallCap Market (*i.e.*, the issuer becomes listed on Nasdaq and ceases to be listed on an exchange). Nasdaq believes that the elimination of such fees is justified on several grounds. An issuer that already paid initial listing fees to an exchange when it became a publicly traded company is reluctant to pay a second initial listing fee to another listing venue, even if it concludes that Nasdaq offers the issuer and its investors superior services and market quality. With the benefit of statistics mandated by Rule 11Ac1–5 under the Act,[5] an issuer seeking the better market may compare the execution speed and quality on its current venue with speed and quality of comparable stocks trading on Nasdaq and conclude that a change in listing would be beneficial. Nevertheless, the benefits of the switch must currently be weighed against the cost of initial inclusion, which ranges from $25,000 to $150,000, depending on the issuer's market tier and the number of shares outstanding. Since the expected benefits of the switch would be diffused among the issuers' investors and realized over time, but the initial listing fees must be paid by the issuer immediately, Nasdaq is concerned that issuers that stand to benefit may nevertheless opt to forgo a switch. As such, Nasdaq believes that assessing the initial fees against issuers that have already paid fees to list on another market imposes a burden on the competition between exchange markets and markets other than exchange markets, a competition that Nasdaq believes is one of the central goals of the national market system.[6]

Nasdaq's concern as to the undue burden on competition imposed by a duplicative initial listing fee is especially acute in the case of New York Stock Exchange (''NYSE'') listed companies, whose opportunities to effect a switch have, until recently, been constrained by NYSE Rule 500.[7] Nasdaq had long advocated the repeal of NYSE Rule 500, in favor of a competitive environment in which significant barriers to listing transfers do not exist and listed companies can move quickly and easily to the market that best suits their needs. In January 2004, Nasdaq announced a program to allow NYSE companies to take advantage of the repeal of NYSE Rule 500 by adding a second listing on Nasdaq and thereby undertake a focused comparison of the services and market quality offered by each listing venue. To date, seven companies have taken advantage of this program. The explicit goal of this program has always been to encourage the eventual switch of companies that dual list, once they have experienced first-hand the benefits of their Nasdaq listing.[8] For that reason, Nasdaq adopted a one-year waiver of entry, annual, and listing of additional shares fees for NYSE companies that dual list, and a waiver of entry fees (the same fees that are the subject of this proposed rule change) for any issuer that switches its listing between January 12, 2004, and December 31, 2004.[9] Without a waiver for switches, companies that have dual listed would nevertheless be forced to weigh the benefits of a Nasdaq listing against the requirement to pay a duplicative entry fee. In effect, NYSE Rule 500 would have been replaced with a burden on listing transfers imposed by Nasdaq itself. To avoid such an incongruous result, Nasdaq believes that the temporary fee waiver for switches adopted earlier this year should be made permanent.

Nasdaq also believes that the proposed rule change is justified from the standpoint of Nasdaq's experience with regard to the time and effort required to review applications of issuers that are already listed on an exchange. Although companies that switch their listings are reviewed for compliance with Nasdaq listing standards in the same manner as any other company applying for listing on Nasdaq, Nasdaq believes that the average application of a switching issuer is less likely to involve time-consuming

[4] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com.* No pending rule filings would affect the portions of these rules amended herein.

[5] 17 CFR 240.11Ac1–5.

[6] *See* 15 U.S.C. 78k–1.

[7] *See* Securities Exchange Act Release No. 48720 (October 30, 2003), 68 FR 62645 (November 5, 2003) (SR–NYSE–2003–23).

[8] It is Nasdaq's expectation that a comparison of the performance of issuers in the dual listing program may also prove instructive to other NYSE issuers and issuers listed on other markets, but that full scale entry fees may impede such issuers from switching.

[9] Securities Exchange Act Release No. 49286 (February 19, 2004), 69 FR 8999 (February 26, 2004) (SR–NASD–2004–04). Nasdaq notes that in SR–NASD–2004–04, it indicated that a dually listed company that transfers to Nasdaq after December 31, 2004 would pay ''the entry fee or a portion thereof.'' As indicated in this filing, however, Nasdaq has now concluded that the imposition of a duplicative entry fee is inequitable to switching issuers and places an undue burden on competition.

regulatory issues than the average application from a company conducting an initial public offering or a company that is applying to Nasdaq after being delisted by another market. This is, in part, due to the ongoing scheme of regulation to which such issuers have been subject. Moreover, because such companies are already familiar with the standards of conduct imposed upon public companies by listing markets, their applications are generally presented with a high degree of completeness and accuracy. Finally, and most significant, because such companies already satisfy the listing standards of another self-regulatory organization, there is a higher likelihood that they also comply with Nasdaq's listing standards. Thus, although Nasdaq always conducts a full and independent review of each issuer's compliance, and will continue to do so with respect to issuers switching from exchanges, Nasdaq believes the probability that a switching issuer will be found not in compliance and therefore denied access to a Nasdaq listing is low. As a result, Nasdaq believes the probability that Nasdaq staff will be required to devote the time and effort required to establish a sufficient record to support a decision to deny listing and to defend such a decision against appeal under the NASD Rule 4800 Series is also low. By contrast, when an applicant is denied a listing, Nasdaq receives only a $5,000 application fee (and possibly hearing fees under the NASD Rule 4800 Series), but must frequently devote resources to defending its decision.

Nasdaq understands that the effect of this proposed rule change will be to impose a lower level of listing fees on switching issuers than on some other issuers.[10] In light of the fact that Nasdaq will collect the same level of annual fees and listing of additional shares fees from such issuers, however, Nasdaq believes that the difference does not constitute an inequitable allocation of fees. Notably, Nasdaq's fee schedule and the fee schedules of other self-regulatory organizations assess varying levels of fees on issuers based on reasoned assessments of the issuers' varying circumstances. For example, both entry fees and annual fees are assessed on a sliding scale that uses total shares outstanding and the issuer's market tier (*i.e.*, Nasdaq National Market or SmallCap Market) as a corollary to the complexity of reviewing each issuer's compliance with listing standards and each issuer's ability to pay. Inevitably, the use of such a scale means that different issuers pay different amounts for their listing on Nasdaq. Similarly, issuers listed on Nasdaq are not subjected to entry fees under NASD Rules 4510(a) and 4520(a) for listing an additional security if they have already paid the maximum entry fee, and annual fees for listing of American Depositary Receipts on the Nasdaq National Market are significantly lower than annual fees for listing of common stock, in recognition of the issuer's payment of listing fees to a foreign market. In light of a switching issuer's prior payment to another market and the generally lower burdens associated with reviewing a switching issuer's eligibility, Nasdaq believes that eliminating initial fees for switching issuers is entirely consistent with an equitable allocation of listing fees. Finally, Nasdaq notes that it does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from switching issuers or in terms of diminished entry fees. Quite simply, even with the proposed rule change in place, Nasdaq understands that a change in listing venue is a major step for an issuer, and therefore Nasdaq does not expect that the number of switching issuers in a given time frame will be sufficient to have a material effect on financial resources. Accordingly, the proposed rule change will not impact Nasdaq's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general, and with sections 15A(b)(5) and 15A(b)(6) of the Act,[12] in particular, in that it is designed to provide an equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. As described above, Nasdaq believes the elimination of entry fees for exchange-listed companies switching to Nasdaq is equitable and reasonable because requiring these companies to pay such fees would impose costs that are duplicative of fees that they have already paid to another market, and is also justified from the standpoint of Nasdaq's experience with regard to the time and effort generally required to process applications of such companies. In addition, Nasdaq believes this change will enable exchange-listed companies to determine more easily the benefits of switching to Nasdaq, thereby eliminating a burden on competition among markets in accordance with the provisions of section 11A(a)(1)(C)(ii) of the Act.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, Nasdaq believes that the proposed rule change will enhance competition by allowing issuers that are listed on an exchange to move their listing to Nasdaq without being required to pay a fee that is duplicative of fees already paid to an exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[10] *See* Securities Exchange Act Release No. 50741 (November 29, 2004) (SR–NASD–2004–142), which established fees for companies with a dual listing on the New York Stock Exchange and Nasdaq.

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(5) and (6).

[13] 15 U.S.C. 78k–1(a)(1)(C)(ii).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–140 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–140. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–140 and should be submitted on or before December 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3452 Filed 12–2–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Impact Statement (DEIS), Notice of Public Comment Period and Schedule of Public Information Meeting and Public Hearing for Proposed Relocation of the Panama City-Bay County International Airport to a New Site in Bay County, FL

AGENCY: Federal Aviation Administration (FAA), DOT. The U.S. Army Corps of Engineers (USACE) is a cooperating federal agency, having jurisdiction by law because the proposed federal action has the potential for significant wetland impacts.

ACTION: Notice of availability, notice of comment period, notice of public information meeting and public hearing.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS)—Proposed Relocation of the Panama City-Bay County International Airport, has been prepared and is available for public review and comment. Written requests for the DEIS and written comments on the DEIS can be submitted to the individual listed in the section **FOR FURTHER INFORMATION CONTACT**. A public information meeting and public hearing will be held on January 11, 2005. The public comment period will commence on November 26, 2004 and will close on January 21, 2005.

Public Comment and Information Meeting/Public Hearing: The start of the public comment period on the DEIS will be November 26, 2004 and will end on January 21, 2005. A Public Information Meeting and Public Hearing will be held on January 11, 2005. The public information meeting will begin at 5 p.m. (c.s.t.) and will last until 7 p.m. (c.s.t.). The public hearing will begin at 7 p.m. (c.s.t.) and will be a joint public hearing with the USACE. The location for the Public Information Meeting/Public Hearing is the Gulf Coast Community College, 5230 US 98, Panama City, Florida. Copies of the DEIS may be viewed during regular business hours at the following locations:

1. Panama City-Bay County International Airport Administration Office, 3173 Airport Road, Panama City, Florida 32405. (850) 763–6751.

2. Bay County Public Library, 25 West Government Street, Panama City, Florida 32401. (850) 872–7500.

3. U.S Army Corps of Engineers, Panama City Regulatory Office, 1002 West 23rd Street, Suite 350, Panama City, Florida 32405. (850) 763–0717.

4. Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822. (407) 812–0331.

The Panama City-Bay County International Airport Administration Office has a limited number of CDs of the DEIS available for public distribution. Please contact this office for a copy.

FOR FURTHER INFORMATION CONTACT: Virginia Lane, Environmental Specialist, Federal Aviation Administration, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822. Ms. Lane can be contacted at (407) 812–6331 (voice), (407) 812–6978 (facsimile).

SUPPLEMENTARY INFORMATION: The FAA prepared this DEIS to disclose the potential environmental impacts resulting from the proposed relocation of the Panama City-Bay County International Airport to a new site in Bay County, Florida. The U.S. Army Corps of Engineers (USACE) is a cooperating federal agency for this DEIS, having jurisdiction by law because the proposed Federal action has the potential for significant wetland impacts. The proposed new site would accommodate airfield development that would meet both short- and long-term aviation needs without being constrained by natural or man-made features. Initial development components of the proposed relocated airport would consist of airport and terminal facilities, and include a primary air carrier runway of 8,400 feet and a general aviation crosswind runway of 5,000 feet. This system would be supported by the necessary ancillary facilities including parallel and connecting taxiways, terminal area facilities, general aviation facilities, air traffic control and emergency service facilities, and lighting and navigation facilities. These initial development components are the subject of this DEIS.

The purpose and need for these improvements is reviewed in the DEIS. All reasonable alternatives will be considered, including the no-action alternative.

Comments from interested parties on the DEIS are encouraged and may be presented verbally at the public information meeting and/or public hearing or may be submitted in writing to the FAA at the address listed in the section entitled **FOR FURTHER INFORMATION CONTACT**. The comment period will close on January 21, 2005.

Issued in Washington, DC, on November 26, 2004.

Dennis E. Roberts,

Director, Office of Airport Planning and Programming.

[FR Doc. 04–26586 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–83]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 23, 2004.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–200X-XXXXX) by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 19, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–19323.

Petitioner: Delta Air Lines, Inc.

Section of 14 CFR Affected: 14 CFR 121.619.

Description of Relief Sought: To allow Delta Air Lines, Inc. (Delta) to dispatch to domestic airports at which for at least 1 hour before and 1 hour after the estimated time of arrival at the destination airport the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling will be reduced from at least 2,000 feet to 1,000 feet above the airport elevation; and visibility will be reduced from at least 3 miles to 1 mile.

[FR Doc. 04–26341 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–113–04–032]

Certification of In-Seat Video Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on Certification of In-seat Video Systems.

DATES: Send your comments on or before January 3, 2005.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: John Piccola, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1509; fax (425) 227–1232; e-mail: *john.piccola@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement No. ANM–113–04–032.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

Based on data industry has presented to the FAA, in-seat video system designs have matured to the point that dedicated testing would not be required per 14 CFR 25.601. Industry may use design review as a method of compliance to show that the system is non-hazardous. This policy recommends analysis as an added method of compliance, in lieu of test, and should clarify questions that have arisen regarding previously released policy on this subject.

Issued in Renton, Washington, on November 10, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25886 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

National Railroad Passenger Corporation

[Docket Number FRA–2004–19756]

The National Railroad Passenger Corporation (AMTRAK) seeks a waiver of compliance from the provisions of the Federal Track Safety Standards, 49 CFR 213.333(l), subpart G, regarding the requirement for conducting annual instrumented wheel set (IWS) testing. The waiver would grant AMTRAK relief by extending their deadline for conducting the 2004 instrumented wheel set (IWS) test on its North East Corridor (NEC). This relief provides AMTRAK sufficient time to jointly resolve technical issues with FRA and allows AMTRAK to better manage the expense and possible service disruptions caused by IWS testing.

AMTRAK anticipates that these technical issues will be resolved with FRA in early 2005. It also anticipates that further testing with IWS for 9 inch cant deficiency operation will need to take place once these technical issues are resolved. In order to reduce cost, and minimize service disruption, AMTRAK would like to schedule its annual IWS testing concurrent with 9 inch cant deficiency testing, and is requesting this waiver so that all testing can benefit from one installation of instrumentation for IWS.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2004–19756) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on November 29, 2004.

Michael J. Logue,

Deputy Associate Administrator for Safety.

[FR Doc. 04–26631 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18745]

Receipt of Applications for Temporary Exemption From a Federal Motor Vehicle Safety Standard; American Suzuki Motorcycle Corporation

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

ACTION: Notice of receipt of two applications for temporary exemptions from a Federal motor vehicle safety standard; Request for comments.

SUMMARY: We have received two applications from American Suzuki Motorcycle Corporation (Suzuki), a motorcycle manufacturer, for temporary exemptions from a provision in the Federal motor vehicle safety standard on motorcycle controls and displays specifying that a motorcycle rear brake, if provided, must be controlled by a right foot control. Suzuki asks that we permit the left handlebar as an alternative location for the rear brake control for two of its scooters, the Burgman 400 and the Burgman 650. Suzuki states its belief that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles.''

We are publishing this notice of receipt of the application in accordance with our regulations on the subject, and ask for public comment on Suzuki's application. This publication does not mean that we have made a judgment yet about the merits of the applications.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 3, 2005.

ADDRESSES: You may submit your comments [identified by the DOT DMS Docket Number cited in the heading of this document] by any of the following methods:

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

You may call the Docket at (202) 366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His FAX number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

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

SUPPLEMENTARY INFORMATION:

I. Background

49 U.S.C. Section 30113(b) provides the Secretary of Transportation the authority to exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard under certain circumstances. The exemption may be renewed, if the vehicle manufacturer reapplies. The Secretary has delegated the authority for Section 30113(b) to NHTSA.

NHTSA has established regulations at 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards.* Part 555 provides a means by which motor vehicle manufacturers may apply for temporary exemptions from the Federal motor vehicle safety

standards on the basis of substantial economic hardship, facilitation of the development of new motor vehicle safety or low-emission engine features, or existence of an equivalent overall level of motor vehicle safety.

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle controls and displays* (49 CFR Section 571.123) specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays, and requirements for motorcycle stands and footrests. Among other requirements, FMVSS No. 123 specifies that for motorcycles with rear wheel brakes, the rear wheel brakes must be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (*see* S5.2.1, and Table 1, Item 11). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less (*see* 49 CFR Section 571.3, Definitions).

On November 21, 2003, NHTSA published in the **Federal Register** (68 FR 65667) a notice proposing two regulatory alternatives to amend FMVSS No. 123. Each alternative would require that for certain motorcycles without a clutch control lever, the rear brakes must be controlled by a lever located on the left handlebar. We also requested comment on industry practices and plans regarding controls for motorcycles with integrated brakes. If this proposed rule is made final, the left handlebar would be permitted as an alternative location for the rear brake control.

II. Applications for Temporary Exemption From FMVSS No. 123

NHTSA has received two applications for temporary exemption from S5.2.1 and Table 1, Item 11 from American Suzuki Motor Corporation, a motorcycle manufacturer. Suzuki asks for extensions of existing temporary exemptions for the Burgman 400 (also known as the AN 400) and the Burgman 650 (also known as the AN 650) for MYs 2005–2006. The Burgman 400 and 650 motorcycles are considered ''motor scooters.''

Suzuki has applied to use the left handlebar as the location for the rear brake control on its Burgman scooters, whose engines produce more than 5 brake horsepower. The frame of the Burgman scooters have not been designed to mount a right foot operated brake pedal (*i.e.*, each motor scooter has a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the motor scooter frame by putting on a foot operated brake control could cause failure due to fatigue, unless proper design and testing procedures are performed.

III. Why the Petitioner Claims the Overall Level of Safety of the Motorcycles Equals or Exceeds That of Non-Exempted Motorcycles

The applicant has argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motorcycle for the following reasons. Suzuki has stated that the Burgman scooters are equipped with automatic transmissions. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles can be operated without requiring special training or practice.

Suzuki provided test data with its October 4, 2002 original temporary exemption petition showing that the Burgman 400 ''can easily meet'' the braking performance requirements in FMVSS No. 122 *Motorcycle brake systems.* Suzuki provided similar test data with its June 2, 2002 original temporary exemption petition for the Burgman 650, which also showed that the Burgman 650 ''can easily meet'' FMVSS No. 122.

Suzuki further stated that it will not sell more than 2,500 exempted vehicles in the U.S. in any 12-month period for which an exemption may be granted. At the end of the exemption period, Suzuki stated that it does not intend to comply with the rear brake control location requirements of FMVSS No. 123. Under previously-granted exemptions, Suzuki sold approximately 2,702 Burgman 400 scooters and approximately 2,947 Burgman 650 scooters over a two-year period.

IV. Why Petitioner Claims an Exemption Would Be in the Public Interest and Would Be Consistent With the Objectives of Motor Vehicle Safety

Suzuki offered the following reason why another temporary exemption for its motorcycle would be in the public interest and would be consistent with the objectives of motor vehicle safety. Suzuki asserted that the level of safety of the Burgman scooters is ''at least equal to similar vehicles that are certified to FMVSS No. 123.'' Suzuki further asserted that scooters like the Burgman 400 and 650 are of interest to the public, evidenced by the number of companies that have previously requested exemptions to sell similar products in the U.S., the favorable public comment on the exemption requests, and the number of scooters sold under the granted exemptions.

V. Comments

How do I prepare and submit comments?

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

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the

close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

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

2. On that page, click on ''search.''

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

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How does the Federal Privacy Act apply to my public comments?

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

Authority: 49 U.S.C. Section 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: November 30, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–26632 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2004–16964 (Notice No. 04–8)]

Notice of Information Collection Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of information collection approval.

SUMMARY: This notice announces Office of Management and Budget (OMB) approval and extension until July 31, 2007 for the following information collection requests (ICRs): OMB No. 2137–0018, ''Inspection and Testing of Portable Tanks and Intermediate Bulk Containers''; OMB No. 2137–0039, ''Hazardous Materials Incidents Reports''; OMB No. 2137–0572, ''Testing Requirements for Non-Bulk Packagings''; and OMB No. 2137–0595, ''Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.''

In addition, this notice announces OMB approval and extension until November 30, 2007 for the following ICRs: OMB No. 2137–0014, ''Cargo Tank Specification Requirements''; OMB No. 2137–0542, ''Flammable Cryogenic Liquids''; OMB No. 2137–0582, ''Container Certification Statements''; OMB No. 2137–0586, ''Hazardous Materials Public Sector Training and Planning Grants''; and OMB No. 2137–0591, ''Response Plans for Shipments of Oil.''

DATES: The expiration dates for these ICRs are July 31, 2007 and or November 30, 2007.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, RSPA has received OMB approval for renewal of the following ICRs:

OMB Control Number: 2137–0014.

Title: Cargo Tank Specification Requirements.

Expiration Date: November 30, 2007.

OMB Control Number: 2137–0018.

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

Expiration Date: July 31, 2007.

OMB Control Number: 2137–0039.

Title: Hazardous Materials Incidents Reports.

Expiration Date: July 31, 2007.

OMB Control Number: 2137–0542.

Title: Flammable Cryogenic Liquids.

Expiration Date: November 30, 2007.

OMB Control Number: 2137–0572.

Title: Testing Requirements for Non-Bulk Packagings.

Expiration Date: July 31, 2007.

OMB Control Number: 2137–0582.

Title: Container Certification Statements.

Expiration Date: November 30, 2007.

OMB Control Number: 2137–0586.

Title: Hazardous Materials Public Sector Training and Planning Grants.

Expiration Date: November 30, 2007.

OMB Control Number: 2137–0591.

Title: Response Plans for Shipments of Oil.

Expiration Date: November 30, 2007.

OMB Control Number: 2137–0595.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

Expiration Date: July 31, 2007.

These information collection approvals expire on July 31, 2007 or November 30, 2007 as indicated.

Issued in Washington, DC, on November 30, 2004.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 04–26633 Filed 12–2–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting applications for the FY 2005 funding round of the Technical Assistance Component of the Community Development Financial Institutions Program.

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CDFA) Number: 21.020.

DATES: Applications for the FY 2005 funding round must be received by 5 p.m. ET on January 25, 2005. All applications submitted must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOFA. Applications received after 5 p.m. ET on the applicable deadline will be rejected and returned to the sender.

Executive Summary: This NOFA is issued in connection with the FY 2005 funding round of the Technical Assistance (TA) Component of the Community Development Financial Institutions (CDFI) Program. Through the TA Component, the Community Development Financial Institutions Fund (the Fund) provides TA grants to CDFIs and entities proposing to become CDFIs in order to build their capacity to better address the community development and capital access needs of their particular target markets. Eligible uses of TA grant funds are set forth in section I.B of this NOFA.

I. Funding Opportunity Description; Award Information

A. Award Information

Through this NOFA, the Fund intends to provide TA grants to build Awardee capacity to serve Target Market(s). Subject to funding availability, the Fund expects that it may award approximately $2 million in appropriated funds through this NOFA. The Fund reserves the right to award in excess of $2 million in appropriated funds under this NOFA, provided that the funds are available and the Fund deems it appropriate. Through this NOFA, the Fund anticipates making awards up to $50,000 each. The Fund, in its sole discretion, reserves the right to award amounts in excess of or less than the anticipated maximum award amount if the Fund deems it appropriate. Further, the Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

B. Types of Awards

TA awards are in the form of grants. An Applicant may submit an application for a TA grant only under this NOFA. Entities seeking financial assistance (FA) awards or a combination of FA awards and TA grants should apply for funds through the FA Component or the Native American CDFI Assistance (NACA) Component of the CDFI Program.

The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which is requested by an Applicant. Applicants for TA grants under this NOFA shall describe the type(s) of TA requested, when the TA will be acquired, the provider(s) of the TA, the cost of the TA, and a narrative description of how the TA will enhance their ability to serve their Target Market(s).

Eligible types of TA grant uses include, but are not limited to, the following: (1) Acquiring consulting services; (2) paying staff salary for the limited purposes of completing tasks and/or fulfilling functions that are otherwise eligible TA grant uses under this NOFA; (3) acquiring/enhancing technology including, but not limited to, upgrading the organization's capacity to collect, electronically track, and report community development impact data; and (4) acquiring training for staff or management.

The Fund will generally not consider requests for TA grants under this NOFA for expenses that, in the determination of the Fund, are deemed to be ongoing operating expenses rather than nonrecurring expenses. The Fund will consider requests for use of TA to pay for staff salary only when the applicant demonstrates, to the Fund's satisfaction, that:

(i) The staff salary relates directly to building the applicant's capacity to serve its target market, including its ability to collect, electronically track and report community development impact data;

(ii) The proposed staff time to be paid for by the TA grant will be used for a non-recurring activity that will build the applicant's capacity to achieve its objectives as set forth in its application;

(iii) The proposed capacity-building activity would otherwise be contracted to a consultant or not be undertaken; and

(iv) The staff person assigned to the proposed task has the competence to successfully complete the activity. The Fund may consider funding requests for other staff salary uses, deemed appropriate by the Fund in its sole discretion, particularly for applicants that have been in operation 24 months or less as of the date of application.

Further guidance on the limited uses of TA grants for staff salary expenditures is available on the Fund's Web site at *http://www.cdfifund.gov*.

C. Notice of Award; Assistance Agreement

Each Awardee under this NOFA must sign a Notice of Award (for further information, see Section V.A, below) and an Assistance Agreement (see Section V.B, below) prior to disbursement by the Fund of award proceeds. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award.

D. CDFI Program Regulations/Interim Rule

The regulations governing the CDFI Program can be found at 12 CFR part 1805 (the Interim Rule) and provide guidance on evaluation criteria and other requirements of the CDFI Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the application related to this NOFA. Each capitalized term in this NOFA is more fully defined in the Interim Rule or the application.

II. Eligibility Information

A. Eligible Applicants

The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *CDFI Certification:* For purposes of this NOFA, eligible Applicants include:

(a) Any certified CDFI whose certification has not expired and/or that has not been notified by the Fund that its certification has been terminated must submit a ''Certification of Material Change Form'' to the Fund not later than January 14, 2005, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov*. Failure to timely submit said form may result in the funding application being deemed fatally incomplete and rejected without further review. Please note that the Fund provided a number of CDFIs with certifications expiring in 2003 through

2005 with written notification that their certifications have been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement; or

(b) Any Applicant from which the Fund receives a complete CDFI certification application no later than January 14, 2005, evidencing that the Applicant can be certified as a CDFI. Applicants may obtain CDFI certification applications through the Fund's Web site at *http://www.cdfifund.gov*. Applications for certification must be submitted as instructed in the application form; or

(c) An entity that demonstrates to the satisfaction of the Fund that it has a reasonable plan to become a certified CDFI by January 31, 2007. Such Applicants must complete the related information in the application and must be certified by said date.

2. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

(a) *Non-certified Applicants.* Any entity that has received a Notice of Award from the Fund for a prior funding round of the CDFI Program or the Native Initiatives Funding Programs, but that has not submitted a CDFI certification application nor been certified as a CDFI, is not eligible to receive funding under this NOFA (see Section II.A.2, above).

(b) *$5 Million Funding Cap.* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. For the purposes of this NOFA, the period extends back three years from the date that the Fund signs a Notice of Award issued to an Awardee under this NOFA.

(c) *Failure to Meet Reporting Requirements.* The Fund will not consider an application submitted by an Applicant if that Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in any previously executed assistance, allocation or award agreement(s) with the Fund, as of the application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

(d) *Pending Resolution of Noncompliance.* If (i) an Applicant is a prior Awardee or allocatee under any Fund program and has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, then the Fund will consider the Applicant's application under this NOFA pending final resolution, in the sole determination of the Fund, of the instance of noncompliance. Further, if (i) another entity that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee and such entity has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance award or allocation agreement, then the Fund will consider the Applicant's application under this NOFA pending final resolution, in the sole determination of the Fund, of the instance of noncompliance.

(e) *Default Status.* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, award or allocation agreement(s) and the Fund has provided written notification of such determination to such Applicant. Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the application deadline, (i) the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and that has been determined by the Fund to be in default of a previously executed assistance award or allocation agreement(s), and (ii) the Fund has provided written notification of such determination to the defaulting entity.

(f) *Termination in Default.* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, within the 12-month period prior to the application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of the assistance, award or allocation agreement and the Fund has provided written notification of such determination to such Applicant. Further, an entity is not eligible to apply for an award pursuant to this NOFA if, within the 12-month period prior to the application deadline of this NOFA, (i) the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant, or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of the assistance, award or allocation agreement, and (ii) the Fund has provided written notification of such determination to the defaulting entity.

(g) *Undisbursed Balances.* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed funds (defined below) under said prior award(s), as of the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA. In the case where another entity Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliates when calculating the amount of undisbursed funds. For the purposes of this section, ''undisbursed funds'' is defined as (i) in the case of prior Bank Enterprise Award (BEA) Program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior BEA Program award(s) for which a BEA award agreement has been fully executed that remains undisbursed more than three

(3) years after the end of the calendar year in which the Fund signed an award agreement with the BEA awardee, and (ii) in the case of prior CDFI Program or other Fund program award(s), any balance of award funds equal to or greater than five (5) percent of the total prior award(s) for which an Assistance Agreement has been fully executed that remains undisbursed more than two (2) years after the end of the calendar year in which the Fund signed an Assistance Agreement with the Awardee. ''Undisbursed funds'' does not include (i) tax credit allocation authority allocated through the New Markets Tax Credit Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee as of the application deadline of this NOFA; (iii) any award funds for an award that has been terminated, expired, rescinded or deobligated by the Fund; and (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements from prior awards to provide the Fund with a complete disbursement request at least 20 business days prior to the application deadline of this NOFA.

(h) *Contact the Fund.* Accordingly, Applicants that are prior Awardees are advised to: (i) Comply with requirements specified in assistance, award and/or allocation agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of said prior award(s). All outstanding reports, compliance or disbursement questions should be directed to the Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through January 21, 2005 (2 business days before the application deadline). The Fund will not respond to Applicants' reporting, compliance or disbursement phone calls or e-mail inquiries that are received after 5 p.m. on January 21, 2005, until after the funding application deadline of January 25, 2005.

(i) *Entities that submit applications together with Affiliates; applications from common enterprises:* As part of the award application review process, the Fund considers whether Applicants are Affiliates, as such term is defined in the Interim Rule. If an Applicant and its Affiliates wish to submit award applications, they must do so collectively, in one application; an Applicant and its Affiliates may not submit separate award applications. If Affiliated entities submit multiple applications, the Fund reserves the right either to reject all such applications received or to select a single application as the only one that will be considered for an award. For purposes of this NOFA, in addition to assessing whether Applicants meet the definition of the term ''Affiliate'' found in the Interim Rule, the Fund will consider: (i) whether the activities described in applications submitted by separate entities are, or will be, operated or managed as a common enterprise that, in fact or effect, could be viewed as a single entity; and (ii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related that, in fact or effect, they could be viewed as substantially identical applications. In such cases, the Fund reserves the right either to reject all applications received from all such entities or to select a single application as the only one that will be considered for an award.

3. *Limitation on Awards:* An Applicant may apply for and receive TA awards from the Fund through the TA Component, the NACA Component and/or the FA Component of the CDFI Program, but only to the extent that the approved uses of TA under such Components are different. In addition, a TA Component Applicant, its Subsidiaries or Affiliates may apply for: (i) A FA award through the FA Component and the NACA Component of the CDFI Program; (ii) a tax credit allocation through the New Markets Tax Credit (NMTC) Program, but only to the extent that the activities approved for a FA Component award are different from those activities for which the Applicant received a NMTC Program allocation; and (iii) an award through the Bank Enterprise Award (BEA) Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102).

4. *Other Targeted Populations:* Other Targeted Populations are defined as identifiable groups of individuals in the Applicant's service area for which there exists a strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. The Fund has determined that there is strong basis in evidence that the following groups of individuals lack access to loans, Equity Investments and/or Financial Services on a national level: Blacks or African Americans, Native Americans or American Indians, and Hispanics or Latinos. In addition, for purposes of this NOFA, the Fund has determined that there is a strong basis in evidence that Alaska Natives residing in Alaska, Native Hawaiians residing in Hawaii, and Other Pacific Islanders residing in other Pacific Islands, lack adequate access to loans, Equity Investments or Financial Services. An Applicant designating any of the above-cited Other Targeted Populations is not required to provide additional narrative explaining the Other Targeted Population's lack of adequate access to loans, Equity Investments or Financial Services. Additionally, the Fund recognizes that there may be other such groups for which there is strong basis in evidence that they lack access to loans, Equity Investments and/or Financial Services. Such groups may be identified, and evidence of such lack of access may be provided, in the Market Need section of the application associated with this NOFA, and the application for CDFI certification (if not identified in the Target Market of a currently certified CDFI).

For purposes of this NOFA, the Fund will use the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented:

(a) American Indian, Native American or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment;

(b) Black or African American: A person having origins in any of the black racial groups of Africa (terms such as ''Haitian'' or ''Negro'' can be used in addition to ''Black or African American'');

(c) Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (the term ''Spanish origin'' can be used in addition to ''Hispanic or Latino'');

(d) Native Hawaiian: A person having origins in any of the original peoples of Hawaii; and

(e) Other Pacific Islander: A person having origins in any of the original peoples of Guam, Samoa or other Pacific Islands.

For further detail, please visit the Fund's Web site at *http://www.cdfifund.gov*, under Certification\Supplemental Information.

III. Application and Submission Information

A. Form of Application Submission

Applicants must submit applications under this NOFA in paper form. Applications sent by facsimile will not be accepted. Detailed application content requirements are found in the application related to this NOFA which may be found at the Fund's Web site, *http://www.cdfifund.gov*. The Fund will send paper application materials to Applicants that are unable to download them from the Web site. To have application materials sent to you, contact the Fund by telephone at (202) 622–6355; by email at cdfihelp@cdfi.treas.gov; or by facsimile at (202) 622–7754. These are not toll free numbers.

B. Application Content Requirements

Detailed application content requirements are found in the FY 2005 application and guidance. Please note that, pursuant to OMB guidance (68 **Federal Register** 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. Incomplete applications will be rejected and returned to the sender.

C. MyCDFIFund Accounts

All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. Applicants must be registered as both a User and an Organization in myCDFIFund as of the application deadline in order to be considered to have submitted a complete application. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the Help documents posted at http://www.cdfifund.gov/myCDFI/Help/Help.asp.

D. Application Submission Dates and Times; Addresses

Applicants must submit all materials described in and required by the application by the applicable deadline. Applicants will not be afforded an opportunity to provide any missing materials or documentation after the deadline.

A complete application must be received at the address set forth below by 5 p.m. ET on January 25, 2005, and must include an original signature page (which includes a DUNS number), a letter or other documentation from the Internal Revenue Service confirming the Applicant's EIN, and all other required attachments. Applications must be submitted in the format and with the number of copies specified in the application instructions. Applications must be sent to: CDFI Fund Grants Management and Compliance Manager, TA Component, Bureau of Public Debt, 200 Third Street, Room 10, Parkersburg, WV 26101. The telephone number to be used in conjunction with overnight delivery or mailings to this address is (304) 480–5450. Applications received in the Fund's offices will be rejected and returned to the sender.

E. Late Delivery

The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services.

IV. Intergovernmental Review

Not applicable.

V. Funding Restrictions

For allowable uses of TA award proceeds, please see section I.B. of this NOFA.

VI. Application Review Information

A. Criteria

The Fund will evaluate each application using numeric scores with respect to the following four sections:

1. *Market Need and CDFI Strategy:* including a review of the Applicant's understanding of the extent of economic distress within the designated Investment Area(s) or the extent of need among the designated Targeted Population(s) (including economic distress caused by severe natural disasters in an Investment Area(s) that has been declared to be a Major Disaster area by the Federal Emergency Management Agency (see *http://www.fema.gov*) or an equivalent state or local agency), the extent of need for the CDFI, the appropriateness of the proposed products, services and delivery strategy to meet the needs in the market;

2. *Management:* including a review of the Applicant's current and proposed management team, governing board, and key staff, its policies and procedures for financial management, and its track record in underwriting and portfolio management and ability to achieve the objectives set forth in its application and track its community development impacts; and to successfully use and track the use of the requested TA award and maintain compliance with its Assistance Agreement(s). If an Applicant has received one or more prior awards through the CDFI Program, the Fund will consider the extent to which the Applicant has submitted required reports in a timely manner and otherwise complied with the Fund's requirements (as described in section VI.B, Review and Selection Process, below);

3. *Financial Health and Resources:* including a review of the Applicant's financial strength, its liquidity, and the likelihood of obtaining resources to sustain operations, and a clear indication that the Applicant will not be fiscally dependent on the Fund; and

4. *Community Development Performance and Effective Use of TA:* including the projected level of activity within the Target Market; the extent to which the proposed activities are expected to promote community development objectives and are likely to create measurable community development impact; the extent to which the Applicant needs the TA award to achieve the objectives set forth in its application; and the likelihood that the TA award will enhance the Applicant's ability to effectively serve its Target Market and achieve measurable community development impact.

B. Review and Selection Process

All applications will be reviewed for eligibility and completeness. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected as incomplete and returned to the sender. The application of an Applicant that does not meet the eligibility requirements will be rejected.

If determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described in the Interim Rule, this NOFA, and the application and guidance.

Each application will be reviewed and scored by a reader. Applications will be scored on a 100-point scale, with a maximum of 25 points allotted to each of the criteria sections described above. Applicants must score at least 12 points in each criteria section to be considered for funding. The Fund will rank the applications that meet the 12-point per criteria section requirement from highest to lowest total score and will

make award decisions in the order of the ranking until all funds available through this NOFA have been committed.

As part of the review process, the Fund may contact the Applicant by telephone or e-mail or through an on-site visit for the purpose of obtaining clarifying or confirming application information. The Applicant may be required to submit additional information to assist the Fund in its evaluation process. Such requests must be responded to within the time parameters set by the Fund.

In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and may deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated in the fiscal year that ended in calendar year 2004, in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (generally FY 2003 and 2004); and (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable). Additionally, the Fund may take into account performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan. All outstanding reports or compliance questions should be directed to the Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–6453; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through January 21, 2005. The Fund will not respond to reporting or compliance phone calls or e-mail inquiries that are received after 5 p.m. on January 21, 2005 until after the funding application deadline of January 25, 2005.

The Fund will make a final funding determination based on the Applicant's file, reviewer scores and recommendations, and the amount of funds available. In the case of Insured CDFIs, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity).

Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. The Fund will notify Awardees by email using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's website.

There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VII. Award Administration Information

A. Notice of Award

The Fund will signify its selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Applicant or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award or allocation agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds, until said prior Awardee or allocatee is current on the reporting requirements in the previously executed assistance, award or allocation agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If (i) an Applicant is a prior Fund Awardee or allocatee under any Fund program and has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to make a final determination regarding whether or not the entity is in default of its previous assistance, award or allocation agreement, then the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if (i) another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program and such entity has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the Fund has yet to

make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, then the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds pending full resolution, in the sole determination of the Fund, of the noncompliance. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement under this NOFA, the Fund (i) has made a final determination that an Applicant that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, award or allocation agreement(s), and (ii) has provided written notification of such determination to the Applicant, then the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if, at any time prior to entering into an Assistance Agreement under this NOFA, the Fund (i) has made a final determination that another entity which Controls the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program, and is in default of a previously executed assistance, award or allocation agreement(s) and (ii) has provided written notification of such determination to the defaulting entity, then the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If, within the 12-month period prior to entering into an Assistance Agreement under this NOFA, the Fund (i) has made a final determination that an Applicant with a prior award or allocation has been terminated in default of such prior agreement and (ii) has provided written notification of such determination to such organization, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or delay making a disbursement of award proceeds under this NOFA. Further, if, within the 12-month period prior to entering into an Assistance Agreement under this NOFA, the Fund (i) has made a final determination that another entity which Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program, whose award or allocation terminated in default of such prior agreement(s), and (ii) has provided written notification of such determination to the defaulting entity, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a disbursement of award proceeds.

B. Assistance Agreement

Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund prior to disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the approved uses of the award; (iii) performance goals and measures; and (iv) reporting requirements for all Awardees. Assistance Agreements under this NOFA will generally have two-year performance periods.

The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. Reporting

1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report; (ii) Institution-Level Report; (iii) Transaction-Level Report (in the discretion of the Fund); (iv) Financial Status Report; (v) Explanation of Noncompliance (as applicable); and (vi) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution-Level Reports, Transaction-Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the CDFI Program. The Institution-Level Report and Transaction-Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives TA awards through this NOFA to account for and track the use of said TA awards. This means that for every dollar of TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will provide guidance to Awardees outlining the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used.

VIII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication

of this NOFA through January 21, 2005. The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on January 21, 2005, until after the funding application deadline of January 25, 2005. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. The Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

A. Information Technology Support

Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov*. People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. Programmatic Support

If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program Operations Manager by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. Administrative Support

If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Management and Compliance Manager by e-mail at *gmc@cdfi.treas.gov*, by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. Legal Counsel Support

If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov*.

E. Communication with the CDFI Fund

The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Applicants must register through myCDFIFund in order to submit a complete application for funding. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by email using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp*.

IX. Information Sessions and Outreach

In connection with the Fiscal Year 2005 funding round, the Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: November 29, 2004.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 04–26597 Filed 12–2–04; 8:45 am]

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Corrections

Federal Register

Vol. 69, No. 232

Friday, December 3, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993–Tile Council of America

Correction

In notice document 04–25076 beginning on page 65228 in the issue of Wednesday, November 10, 2004, make the following corrections:

1. On page 65228, in the third column, the subject heading is corrected to read as set forth above.

2. On page 65229, in the first column, in the second line, ''Title'' should read ''Tile''.

3. On the same page, in the same column, in the first full paragraph, in the fourth line, ''Title'' should read ''Tile''.

4. On the same page, in the same column, in the same paragraph, in the ninth line, ''title'' should read ''tile''.

[FR Doc. C4–25076 Filed 12–2–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
December 3, 2004

Part II

Federal Communications Commission

47 CFR Parts 0, 4, and 63

Disruptions to Communications; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 4 and 63

[ET Docket No. 04–35; FCC 04–188]

Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document extends the Commission's disruption reporting requirements to communications providers who are not wireline carriers. The Commission also streamlines compliance with the reporting requirements through electronic filing with a ''fill in the blank'' template and by simplifying the application of that rule. In addition, the Commission delegates authority to the Chief, Office of Engineering and Technology, to make the revisions to the filing system and template necessary to improve the efficiency of reporting and to reduce, where reasonably possible, the time for providers to prepare, and for the Commission staff to review, the communications disruption reports required to be filed. These actions will allow the Commission to obtain the necessary information regarding service disruptions in an efficient and expeditious manner and to achieve significant concomitant public interest benefits.

DATES: Effective January 3, 2005 except for Part 4 and the amendments to § 63.100, which contains information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the modified information collection requirements must be submitted on or before January 3, 2005. Written comments must be submitted by the Office of Management and Budget on the information collection requirements on or before January 3, 2005.

ADDRESSES: Comments on the information collection requirements should be addressed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy should be submitted to Leslie Smith, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via Internet to *Leslie.Smith@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kristy_L._LaLonde@omb.eop.gov.* or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: Charles Iseman at (202) 418–2444, *charles.iseman@fcc.gov,* Office of Engineering and Technology, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, portion of the Report and Order and Further Notice of Proposed Rule Making, ET Docket No. 04–35, FCC 04–188, adopted August 4, 2004, and released August 19, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at *www.fcc.gov.* Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Final Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due January 3, 2005. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

In this present document, we have assessed the effects of how the modified outage-reporting requirements, which apply to wireline communications providers and to cable communications providers of circuit-switched telephony, and the new outage-reporting requirements, which apply to satellite communications providers, Signaling System 7 (''SS7'') providers, terrestrial wireless communications providers, and affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications, will impose information collection burdens on small business concerns. We anticipate that the revised rule will require the reporting of a few more outages than the approximately 200 outages that were reported annually. Communications providers that are small businesses are likely to have far fewer end users than the large ILECs, which have filed the vast majority of all outage reports in the past. We find it likely that, only on the rarest of occasions, small businesses may be required to file outage reports. Furthermore, it is practically inconceivable that a small business employing 25 or fewer employees will ever be required to file an outage report, because the communications providers to whom the revised rule applies typically require far larger numbers of employees.

Congressional Review Act

The Commission will send a copy of this Report & Order, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Summary of Report and Order

1. The Report and Order adopted, with some modifications, the Commission's proposal to extend mandatory outage-reporting requirements to include all communications providers (satellite and wireless providers, in addition to wireline and cable communications providers, which are now covered by the rule) that provide voice and/or paging communications. As proposed, we adopt a common metric that will apply across all communications platforms in determining the general outage-reporting threshold criteria. The common metric is the number of ''user-minutes'' potentially affected by an outage and is defined as the mathematical result of multiplying the outage's duration expressed in minutes and the number of users potentially affected by the outage. For example, a 30-minute outage that potentially affects 30,000 end users also potentially affects 900,000 user-minutes (30 minutes × 30,000 users = 900,000 user-minutes). The general threshold criteria are that an outage must be reported to the Commission if (a) its duration is at least 30 minutes; and (b) it potentially affects at least 900,000 user-minutes. We have applied the common metric and general threshold criteria as a basis for determining specific outage-reporting threshold criteria that account for the

unique technical aspects of each communications platform. In taking these actions, the Commission recognizes that, although these requirements were originally established within the telecommunications common carrier context, it is now appropriate to adapt and apply them more broadly across all communications platforms to the extent discussed in the Report and Order. In an effort to promote rapid reporting and minimal administrative burden on covered entities, the Commission also streamlines compliance with the reporting requirements through electronic filing with a ''fill in the blank'' template and by simplifying the application of the existing rule (47 CFR 63.100).

2. *Extension of Mandatory Reporting Requirements for Communications Providers.* Most commenting parties recognize the need for some form of outage reporting so that the Commission can fulfill its responsibilities in overseeing the reliability and security of our Nation's telecommunications networks. The Department of Homeland Security (''DHS'') undisputedly needs this data to fulfill its responsibilities concerning homeland security. There was, however, a mixed record concerning the manner in which outage data should be collected, with some commenting parties in favor of mandatory outage reporting and others opposed. We find that the mandatory reporting of network outages is the only reliable way to collect this important information for use by this Commission and, where appropriate, for other government entities.

3. In its comments, the Department of Homeland Security states it ''is not opposed to a voluntary reporting structure, provided there is persuasive evidence of *an absolute commitment from all carriers* in the relevant industry segments *to participate fully and to furnish complete and accurate disruption information in a consistent, timely, and thorough manner.*'' There is, however, no evidence in the record that the ''Industry-Led Outage Reporting Initiative'' (''ILORI'') process proposed by the Alliance for Telecommunications Industry Solutions (ATIS) and other commenting parties, or any other voluntary process, would meet the Department's criteria that all relevant communications providers provide an absolute commitment to participate fully in a voluntary reporting structure; nor is there any probative evidence that the participants would, thereafter, furnish complete or accurate service disruption information in a consistent, or timely, or thorough manner.

4. In sum, based on the record before us, we find no persuasive evidence that a voluntary program would be workable. We therefore adopt our proposal to extend mandatory outage reporting to non-wireline communications providers, and we will treat information in all outage reports as confidential information that is exempt from routine public disclosure under Freedom of Information Act (''FOIA''). *See* the Commission's Rules, 47 CFR 0.457, 0.459. We note, however, that the analytical substance of these reports is essential to the development and validation of best practices. As a consequence, we will also use information from those reports in analyses that will enable us to provide guidance to the Network Reliability and Interoperability Council, the Network Reliability Steering Committee and other organizations. We will do so, however, in a way that does not provide sensitive information to those who might use it for hostile, or competitive, purposes. (This may take the form, for example, of providing direct assistance to developers of Best Practices who address sources of outage problems. This would be consistent with previous efforts by our staff who, by analyzing outage reports, were able to provide detailed guidance to the Network Reliability Steering Committee and Network Reliability and Interoperability Councils.)

5. The Department of Homeland Security (''DHS'') requests that it receive outage information directly, so that the Secretary of the Department of Homeland Security and the Department's organizational units can fulfill their responsibilities under the Homeland Security Act of 2002, which granted DHS broad authority to obtain information from federal agencies. *See* 6 U.S.C. 21(d)(4) and (13) providing DHS with ''timely and efficient access * * * to all information necessary to discharge the responsibilities under this section. * * *''); 6 U.S.C. 122(a)(1) (giving DHS access to ''all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government''); 6 U.S.C. 122(b) (DHS may obtain access to information from agencies ''on regular or routine basis''). In addition, the Commission has an affirmative obligation to ''promptly'' provide DHS with all reports and information relating to threats of terrorism concerning critical infrastructure vulnerability. *See* 6 U.S.C. 122(b)(2). We will, therefore, make available to DHS, in encrypted form and immediately upon receipt, all electronically submitted outage reports. DHS can then undertake to provide information from those reports to such other governmental authorities (such as State Public Utilities Commissions) as it may deem to be appropriate.

Consistent Reporting

6. *A. Common Metric.* We conclude that the reporting threshold should henceforth be based on the number of ''users'' potentially affected by outages instead of the more ambiguous term ''customers,'' which is currently employed in our rules. Most commenting parties agree, in the abstract, that ''users'' would be a less ambiguous metric than ''customers.'' In addition, we are not persuaded by the comments that suggest the use of ''blocked calls'' would be superior to user-minutes as a basis for a threshold reporting criterion, and we adopt the proposed 900,000 user-minutes as a common metric to serve as an outage-reporting threshold. The major weakness of the blocked calls proposal is that it would result in a significant undercount of the number of users potentially affected by any outage. Our focus on the number of potentially affected end users is even more important today, in light of the homeland security concerns raised in the aftermath of the tragic events of September 11, 2001. In short, and more generally, because earthquakes, hurricanes, and terrorist attacks can occur at any time, day or night, we need to ensure that our communications infrastructure is reliable and secure on a ''24–7'' basis. In sum, our proposed 900,000 user-minute threshold could result in the reporting of more outages in rural areas (*e.g.*, if telecommunications in those areas were less reliable); however, the availability of essential telecommunications services are particularly vital in rural areas, given the remote nature and lack of quick access to emergency services and other forms of communications that are more frequently available in urban environments. In this regard, we do not agree with the comments of the Staff of the Kansas Corporation Commission that it is necessary to lower the reporting threshold to 150,000 user-minutes in order to capture rural outage data. And, an increased number of outages affecting large organizational customers could also be reported because the number of potentially affected end users would no longer be under counted. In other words, use of the common metric will result in a more

accurate and realistic assessment of outages on a national basis. We have adopted our proposed 900,000 user-minute as a common metric for determining the general outage-reporting threshold for each communications technological platform addressed in the Report and Order.

7. *B. Simplified Reporting for Special Offices and Facilities and 911 Services.* Based on the record, we conclude that some revisions to our proposed 911/E911 outage-reporting criteria are justified. We have adopted the following threshold criteria for reporting 911/E911 outages for wireline and non-wireline operations:

(1) There is a loss of communications to PSAP(s) potentially affecting at least 900,000 user-minutes and: (a) The failure is neither at the PSAP(s) nor on the premises of the PSAP(s); (b) no reroute for all end users was available; and (c) the outage lasts 30 minutes or more; or

(2) There is a loss of 911 call processing capabilities in one or more E–911 tandems/selective routers for at least 30 minutes duration; or

(3) One or more end-office or MSC switches or host/remote clusters is isolated from 911 service for at least 30 minutes and potentially affects at least 900,000 user-minutes; or

(4) There is a loss of ANI/ALI and/or a failure of location determination equipment, including Phase II equipment, for at least 30 minutes and potentially affecting at least 900,000 user-minutes (provided that the ANI/ALI or the necessary location determination equipment was then currently deployed and in use, and the failure is neither at the PSAP(s) or on the premises of the PSAP(s)).

In taking this action, we have applied the 900,000 user-minute threshold as a substitute for the 30,000 customer threshold proposed by commenting parties in order to maintain consistency with the general threshold that we have adopted. We also adopted BellSouth's suggestion to specify that it is the loss of ''911 call processing capabilities'' in E–911 tandem/selective routers, and not the loss ''all call processing capabilities,'' that is the gist of this reportable event. In addition, we are persuaded by NENA's comments that ANI/ALI (callback and location identification) functionality is a fundamental part of E911 service whose loss should be considered to be a reportable event. ANI/ALI functionality or its loss can make, and has made, the difference between life and death, even in situations in which voice 911 calls were completed. We understand that communications providers will not necessarily know whether the PSAP(s) receive 911/E911 communications. Therefore, the providers' responsibility is to report outages that meet the threshold criteria and that potentially affect their ability to transmit 911/E911 communications to the PSAP(s). We will not hold providers accountable for determining whether their transmissions were in fact received by the PSAP(s). For this reason, we are excluding outages caused by ''failures at the PSAP(s) or on the premises of the PSAP(s).'' We disagree with the contention that some of the threshold criteria should be limited to only those outages that are caused by a failure in the reporting communications provider's network. We find that it is vitally important that we be informed of all significant outages that affect PSAPs, regardless of the network(s) in which the underlying causal factors lie. This information is crucial to gleaning more quickly a fuller understanding of how outages in a network affect other networks. This is especially so where PSAPs are affected, because of their major role in protecting public safety and human lives. We also disagree with the contention that the Commission should defer addressing outage reporting requirements for E911 until the completion of NRIC VII's study of the issue, at the end of 2005. We find that the public's interest in reliable and secure public safety E911 telecommunications is better served by our acting promptly.

8. We are persuaded that our original proposal to include as special facilities all airports, including those small private airports that lack modern air traffic control communications infrastructure, may be overly inclusive. Instead, we shall limit the reporting requirement to those airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airport Systems (NPIAS) (as issued at least one calendar year prior to the outage) for the following reasons. There are over 19,000 airports in the United States. Most of those airports are civilian landing areas that are not open to the general public. That leaves a total of 5,314 airports open to the public. Of those airports, there is a list of (currently) 3,489 airports listed in the current NPIAS plan as airports that are ''significant to national air transportation.'' These airports are categorized as primary (PR), commercial (CM), reliever (RL), and general aviation (GA). There are currently 422 PR, 124 CM, 260 RL, and 2558 GA airports. Commercial airports are airports that receive scheduled passenger service and enplane at least 2,500 passengers per year. Of the primary airports, 142 are hubs. A hub is a commercial airport that individually enplanes at least .05% of the total U.S. customer volume per year. All hub airports will be covered by our outage reporting requirements. We also find that the primary non-hub airports, which are commercial airports that enplane over 10,000 passengers per year, should be covered by these requirements. Similarly, we are including reliever airports, which are airports that are used as alternatives for congested hubs, as well as providing general aviation service to the surrounding area. In contrast we will exclude at this point general aviation airports, which are the airports that do not receive scheduled commercial service. In sum, 806 airports—the 422 primary airports including all hubs, the 124 commercial service airports, and the 260 reliever airports that are used as alternative airports for congested hubs—will now be covered by the revised outage-reporting requirements for special facilities that we are adopting herein. Although we believe that all communications providers will be able to adapt fairly easily to the inclusion of these airports within the outage-reporting requirements for special offices and facilities, we recognize that in some cases small rural communications providers might not be able to comply with the revised rule. In such cases, we anticipate granting appropriate waivers of this rule to providers that file a written request for waiver of the rule that is supported with clear and convincing evidence of the need for such a waiver.

9. As commenting parties have pointed out, the critical communications infrastructure serving airports is landline based. Therefore, the outage-reporting requirements for special offices and facilities, insofar as they cover communications to airports, will not be applied to satellite and terrestrial wireless communications providers at this time.

10. *C. Elimination of Separate Reporting Requirement for Fires.* A separate reporting requirement, set forth in § 63.100(d), pertains to the reporting of outages caused by fires. Carriers are required to report fire-related incidents that affect 1,000 or more service lines for a period of 30 minutes or more, § 63.100(d). Only a few outages have been reported pursuant to this subsection and these have tended to be very minor outages. In general, major fire outages have met the more general reporting criteria because they exceed the current 30-minute, 30,000-customer

threshold criteria. Such outages would also exceed the proposed 900,000 user-minute threshold criterion. We therefore proposed to eliminate this requirement. Commenting parties unanimously support elimination of this rule for the reasons that we advanced in the *NPRM.* We therefore conclude that the separate reporting requirement for outages caused by fires no longer serves the public interest and rescind that requirement.

11. *D. Simplified Time Calculation for Filing Initial Report.* In the *NPRM,* we had proposed to require the filing of initial outage reports within two hours of the onset of the outage and the filing of final reports within 30 days of the onset of the outage. We are persuaded, however, that the alternative three-step approach proposed by various commenting parties would best provide the information that we need in an efficient and timely manner and would lessen the administrative burden on communications providers. A ''bare-bones'' notification within two hours of the provider's first knowledge of the outage will alert the Commission and DHS that a significant outage might be underway and will also provide some essential initial information (*e.g.*, who to contact if more information were required in order to proceed further) if it is necessary to proceed further. This will not impose any significant burden on the provider's restorative efforts. Efficient, electronic, Web-based filing, using a ''fill-in-the-blank'' template will be the preferred method of notification, but since there cannot be a guarantee that any particular method of communications would be operating normally, other written alternatives (*e.g.*, FAX, courier) would be equally acceptable. The Notification shall include the following items—Reporting Entity, Date, Time, Brief Description of Problem, Services Affected, Geographic Area, Contact Name and Contact Telephone Number. At the three-day (72-hour) mark, the initial report shall be due. The data contained in the initial report will tend to be more complete and accurate than those that are filed at the two-hour mark under our current reporting rule. It may be the case, as PanAmSat and SES Americom suggest, that varying amounts of information will be available at the three-day mark from one outage to another and, thus, that not all data fields in every initial outage report will be able to be completed on time. We understand this but expect that reporting providers will exercise good faith in filling out the initial report as completely as possible. As a result, use of the same template for initial and final reports will enable reporting entities to submit all available information in the initial report and re-use that information in the final report to the extent that it is still accurate. Attestation will be required for the final report only.

12. *E. Other.* In the *NPRM,* we tentatively found that existing requirements for final disruption reports should be modified to include the following information:

- A statement as to whether the reported outage was at least partially caused because the network did not follow engineering standards for full diversity (redundancy) (the deployment and operation of redundant assets (*e.g.*, transmission facilities, network equipment, or logical paths) to achieve survivable communications in the event of a failure. Diversity requirements are specified in applicable industry standards and best practices.); and
- A statement of all of the causes of the outage. Outages may result from the occurrence of several events. The current rule requires that the final report identify the root cause, § 63.100(h)(1). Experience in administering this part of our rules has convinced us that there may be more than one root cause and that, to facilitate analysis, all causes of each outage should be reported.

In addition, as the communications market evolves, we anticipated that communications might increasingly be offered through complex arrangements among communications providers and other entities (which may or may not be affiliated with the provider) that maintain or provide communications networks or services for them. For example, local exchange carriers have long provided Signaling System 7 (''SS7'') communications for their own use as well as for their customers, but some entities have more recently emerged to provide SS7 for such carriers. We proposed to require these entities to comply with any disruption reporting requirements that we may adopt to the same extent as would be required of the communications provider if it were directly providing the voice or data communications or maintaining the system.

13. After reviewing the record in this proceeding, we find that the public interest will be best served by requiring that final outage reports identify whether the outage was at least partially caused because the network did not follow engineering standards for full diversity (redundancy). In an era in which networks are increasingly interconnected and in which there is heightened concerns that a failure of one network could conceivably cause the failure of other, interconnected networks, we find it important to facilitate analysis of the extent to which lack of diversity causes significant network outages. To analyze the text fields of existing outage reports manually for variations from best practices and for lack of diversity would be a very time consuming task. If past outage reports had contained a check box for identifying a lack of diversity, those analyses could have been readily done. In any event, we deem it important to discover if increased diversity would appreciably prevent the occurrences of outages. Therefore, we conclude that the outage template should, as proposed, include a checkbox for diversity. In general, if Best Practices related to diversity are discussed in any of the Best Practice fields or if lack of diversity is listed as a root cause or contributing factor to the outage, then the diversity checkbox must also be checked. In addition, we have been persuaded by those comments that assert that each outage has only a single root cause but may have many contributing factors. Accordingly, reporting entities will be required to reveal in the final outage report the root cause of the outage and several contributing factors (if any) to the outage.

14. Regarding outage reporting by third party entities that maintain or provide communications networks or services for covered communications providers, we adopt our proposal. We point out that equipment manufacturers or vendors that do not maintain or provide such networks or services will not be subject to outage-reporting requirements. As BellSouth cogently observes: ''SS7 outages have the potential to affect large numbers of end users and can have a large impact on the reliability and availability of the public switched telephone network'' and therefore ''it is reasonable to require disruption reporting for SS7 service from all SS7 providers.'' Although, as Syniverse, KCC, and Ericsson observe, third party entities and communications providers should fully cooperate in assembling outage report data and in restoration efforts, we do not deem it advisable to countenance any delay that could result from these coordination efforts or from any emerging contractual disputes among the parties with respect to their service agreements. The outage reporting requirements we have adopted serve not only the general, long-term interests of network reliability and security, and potential resultant improvements in customer service, but also the overarching need to obtain

rapidly and accurately outage data that could serve the vital interests of homeland security. Our proposal better serves those vital interests and we therefore adopt it.

Outage Reporting Requirements for Wireline Communications

15. *A. Voice Telephony.* We use the term ''wireline provider'' to refer to an entity that provides terrestrial communications through direct connectivity, predominantly by wire, coaxial cable, or optical fiber, between the serving central office (as defined in the Appendix-Glossary to 47 CFR part 36) and end user location(s). We proposed to require wireline providers to report outages that meet the following criteria:

- The outage duration must be at least 30 minutes; *and*
- The number of ''user-minutes'' potentially affected must equal or exceed 900,000.

16. For telephony, we proposed to define the number of end users as the number of ''assigned telephone numbers,'' by which we mean the sum of ''assigned numbers'' and ''administrative numbers'' as defined in § 52.15(f)(i) and (iii) of the Commission's Rules, § 52.15(f)(i), (iii). Assigned numbers are defined as ''numbers working in the Public Switched Telephone Network (''PSTN'') under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending.'' Administrative numbers are ''numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.'' We tentatively concluded that the combination of these two measurements would provide a better assessment of the number of users that are potentially affected by the communications disruption, as distinguished from the number of ''customers'' that may be potentially affected.

17. After reviewing the record, we agree with a number of commenting parties that our proposed use of assigned telephone numbers as a count of *potentially affected* wireline end users could result in a small over counting, which might unnecessarily increase the number of reports. Hence we have revised our requirement to include assigned telephoned number *or* working telephone numbers, where working telephone numbers refer to telephone numbers that have been assigned and provisioned for service. (To be more specific, ''working telephone numbers'' are defined to be the sum of all telephone numbers that can originate, or terminate telecommunications. As a consequence, this would include, for example, all working telephone numbers on the customer's side of a PBX or Centrex.) Working telephone numbers include direct inward dialing (''DID'') telephone numbers assigned to PBX and Centrex customers. Service providers may be aware of working telephone numbers to support their billing and operations processes and, if so, may use working telephone numbers in place of assigned telephone numbers. If the working telephone numbers are unknown for any reason, assigned telephone numbers must be used.

18. Blocked calls, which were proposed as an alternative by a number of commenting parties, measure the actual impact, not the potential impact, of an outage. Our concern is to identify problem areas in the network by receiving reports on events that, if they had occurred at a different time or on a different day of the week, could have affected many users. We are not interested primarily in a tally of the exact number of users that were affected because we have not, and do not currently intend to rank or rate outage reports based on their actual impact on end users.

19. Furthermore, the use of blocked calls as a reporting criterion would result in a significant undercounting of the number of end users *potentially affected* by outages. We find that the use of ''access lines in service'' or any of the other types of lines mentioned in the comments would suffer from the same flaw primarily because there are no useful definitions on the record for any of those terms. (As a general example, a large PBX or Centrex with many users, working stations, and telephone numbers can be connected to a switch by a relatively small number of lines or trunks. Simply counting these lines or trunks would underestimate the number of potentially-affected end users. In fact, even counting telephone numbers may underestimate the impact, particularly in the case of PBXs for which unique telephone numbers are not assigned to each end user.)

20. We disagree with ATIS's assertions about inaccuracies and ''out-datedness'' of, and difficulties in using, NRUF data. ATIS's claim that the NRUF reports ''do not reflect *working telephone lines''* is not apposite because the Commission's rules, which are also clearly set forth in the NRUF instructions, state that ''assigned numbers are *numbers working* in the Public Switched Telephone Network.'' (§ 52.15 (f)(1)(iii) makes no reference to the number of ''lines.'') In addition, it is not clear what definition of ''working'' ATIS is using in reference to access lines. We emphasize that telephone switches are not designed to enable every telephone number that can be served by a switch to be actually served simultaneously, but every such number is *potentially affected* if the switch fails. Our rules and the NRUF guidelines clearly spell out the five mutually exclusive utilization categories in which telephone numbers are to be counted. These categories cover all of the various problem areas mentioned in the comments.

21. Similarly, ATIS and other's proposed requirement—that a ''survivable element'' must fail in order for an outage to be reportable—fails to account for the fact that end users are potentially affected by outages regardless of whether ''survivable elements'' fail. We take particular exception to the USTA comment that outages should not be required to be reported if ''non-intelligent elements'' are involved regardless of the number of users affected. We stress that our concern is with the communications users, not with the intelligence or lack thereof in various network elements. As ATIS and others state, the adoption of our proposal could result in the filing of more outage reports than have been filed under the existing reporting threshold criteria. We do not believe that the number of such reports will dramatically increase, but the additional data will better enable the Commission to meet its responsibilities to facilitate increased reliability and security of our nation's telecommunications infrastructure.

22. Finally, we reject the assertions that it is difficult and cumbersome for wireline providers to use NRUF data to determine the number of assigned telephone numbers potentially affected by outages. The NRUF data is reported by rate center, and the individual utilization records in each rate center are reported by NPA, NXX, and the thousands digit of the telephone numbers. It is a simple, straight forward process for wireline providers to use the Local Exchange Routing Guide (''LERG'') (which is published by Telcordia and updated monthly) to sum up the utilization of all the numbers served by each switch to determine the total assigned numbers and administrative numbers. We note that none of the smaller carriers or their industry associations that submitted comments in this proceeding has raised any concern regarding their ability to

track assigned and administrative numbers for each switch. All wireline carriers continuously keep track of assigned and administrative numbers so that an incoming call to any of those numbers can be switched to the correct line and trunk, so that they can respond to requests for new service or for specific vanity telephone numbers. As a consequence, we find that our proposal will best serve the public interest and, therefore, has been adopted.

23. *B. IXC and LEC Tandem Outages.* Section 63.100(g) states that, for the tandem facilities of interexchange or local exchange carriers, ''carriers must, if technically possible, use real-time *blocked calls* to determine whether criteria for reporting an outage have been reached. Carriers must report IXC and LEC tandem outages * * * where more than 90,000 calls are blocked during a period of 30 or more minutes for purposes of complying with the 30,000 potentially affected customers threshold.'' § 63.100(g) (emphasis supplied). This subsection further provides that: ''[c]arriers may use historical data to estimate blocked calls when required real-time blocked call counts are not possible. When using historical data, carriers must report incidents * * * where more than 30,000 calls are blocked during a period of 30 or more minutes for purposes of complying with the 30,000 potentially affected customers threshold.'' We proposed to modify this rule to replace the ''customer'' metric with the ''assigned telephone number-minute'' metric, in order to be consistent with the other modifications that we proposed. We also noted that the term ''blocked calls'' is not clearly defined in § 63.100 and that some companies have counted only originating calls that are blocked, while other companies count both originating and terminating blocked calls. To eliminate this ambiguity and permit the Commission to gain an understanding of the full impact of each outage, as well as to promote consistent reporting by all carriers, we proposed to require that all blocked calls, regardless of whether they are in the originating or terminating direction, be counted in determining compliance with the outage reporting threshold criteria.

24. For those outages where the failure prevents the counting of blocked calls in either the originating or terminating direction, or in both directions, historical data may be used. We tentatively concluded that three times the actual number of carried calls for the same day of the week and the same time of day should be used as a surrogate for the number of blocked calls that could not be measured directly. The proposed multiplicand of three is based on the total number of times (three) that an average subscriber would attempt to redial a number after first not being able to complete a telephone call. *In the Matter of Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions,* CC Docket No. 91–273, *Second Report and Order,* 9 FCC Rcd 3911, 3914 at ¶ 14 (1994). We also clarified that ''blocked calls'' are a ''running measurement'' made for the total duration of the outage. That is, an outage that blocks only 50,000 calls in the first 30 minutes may nevertheless reach the 90,000 blocked-call threshold criterion if the outage lasts, for example, for one hour. In relatively rare cases, it may be possible to obtain the number of outgoing blocked calls only, or the number of incoming blocked calls only, but not both. For these cases, we proposed to require that the blocked-call count be doubled to compensate for the missing data, unless the carrier certifies that only one direction of the call set-up was affected by the outage.

25. Based on our review of the record, we believe that there is some confusion about our proposal. Contrary to the comments of several entities, we are not using assigned telephone numbers as the basis for determining if a tandem outage is reportable. Instead, we are using blocked calls. We disagree with commenting parties who object to our proposal to triple the number of historic carried calls to determine if an outage is reportable. We believe that setting the threshold for real-time blocked calls equal to triple the threshold using the number based on measured historic carried calls is still appropriate. This is not a change in the Commission's position. The existing rule, as it always has, states:

> Carriers must report IXC and LEC tandem outages * * * where more than *90,000 calls are blocked* during a period of 30 or more minutes for purposes of complying with the 30,000 potentially affected customers threshold. Carriers may use historical data to estimate blocked calls when required real-time blocked call counts are not possible. *When using historical data,* companies, corporations or entities must report incidents * * * where more than *30,000 calls are blocked* during a period of 30 or more minutes for purposes of complying with the 30,000 potentially affected customers threshold.

Section 63.100(f) of the Commission's Rules, (emphases added). (When referring to historical data, for which 30,000 ''historic carried calls'' is the appropriate criterion, the existing rule inaccurately refers to 30,000 ''calls [that are] blocked.'' This is so, because in the historic period, all calls were presumably carried and none were ''blocked.'') One can logically infer that there are more call attempts when outages occur. This implies that there should be a conversion factor when using real-time information instead of historical information. In the early 1990s, ATIS Committee T1A1.2 used a factor of three in its recommended methodology. This resulted in the existing threshold of 90,000 for real-time blocked calls. If we follow the suggestion of certain commenting parties and eliminate the factor of three, the threshold for real-time blocked calls would be 30,000 blocked calls—the same as the threshold for historical carried calls. We find that this would be an unsupported deviation from the existing rule and would disserve the public interest.

26. We strongly disagree with Sprint's recommendation that we limit the counting of blocked calls to those that occur in the first 30 minutes of an outage. This would result in a severe and unjustified undercount of the effects of outages. Thus, many severe outages would not be reported. Most outage reports that the Commission receives and which have been triggered by blocked calls are the result of cable failures; these outages can persist for hours and even days. Regarding the ''originating'' and ''terminating'' terminology that we have historically applied to blocked calls, we acknowledge that for tandem switches the terms ''incoming'' and ''outgoing'' would serve just as well. Our paramount goal is to ensure that all effects of outages are counted. For outages of tandem switches, all blocked calls need to be counted. Since any call incoming to a tandem switch is also outgoing from that tandem, the number of blocked calls can be counted by determining the number of blocked incoming calls or by determining the number of outgoing blocked calls. That is, there is no need to double either figure or to add them together. For failures of interoffice facilities, blocked calls also need to be counted. Many interoffice facilities carry traffic in both directions. In this case, if the number of blocked calls in only one direction can be determined, then the estimate of the number of blocked calls for both directions must be obtained by doubling that number. Our proposal, when interpreted and applied in this manner, will not result in the double counting of blocked calls but will accurately count the number of all blocked calls. Therefore, we adopt our

proposal. Additionally, we clarify that whenever a provider relies on available ''historical data,'' it must use historic carried call load data for the same day of the week and the same time of day as the outage, and for a time interval not older than 90 days preceding the onset of the outage. Finally, we must account for situations where, for whatever reason, real-time and historical data are unavailable to the provider, even after a detailed investigation. In such cases, the provider must determine the carried call load based on data obtained in the time interval between the onset of the outage and the due date for the final report; this data must cover the same day of the week and the same time of day as the outage. Justification that such data accurately estimates the traffic that would have been carried at the time of the outage had the outage not occurred must be available on request.

Outage Reporting Requirements for Wireless and Paging Communications

27. *A. Common Metric for Paging and Wireless Services.* Consistent with the 30-minutes/900,000 user-minutes criteria, we proposed in the *NPRM* to require wireless service providers to report outages of at least 30 minutes duration that potentially affect 900,000 user-minutes. We sought comment on this proposal. For those paging networks in which each individual user is assigned a telephone number, we proposed to define an end user as an assigned telephone number, and the number of potentially-affected user minutes would be the mathematical result of multiplying the outage's duration (expressed in minutes) by the number of potentially-affected assigned telephone numbers. It is our understanding that for other paging networks in which a caller must first dial a central number (*e.g.*, an ''800 number'') and then dial a unique identifier for the called party, the paging provider maintains a database of identifiers for its end users and would therefore know how many of its end users are potentially affected by any particular outage. The number of potentially-affected end users for those paging networks would simply be the mathematical result of multiplying the outage's duration (expressed in minutes) by the number of end users potentially affected by the outage. We sought comment on this interpretation and proposed addition to our rules.

28. In the *Report and Order,* we adopted outage reporting requirements for paging providers because of paging's vitally important role in alerting first responders and other critical personnel in emergencies, as well as its general importance as part of our Nation's telecommunications infrastructure. Nonetheless, we recognize that paging users are highly mobile, and there is no way to predict accurately how many users will be at specific locations at any particular time. Therefore, after considering the comments filed with respect to our proposal, we are adopting modified outage-reporting threshold criteria for paging to account for its unique characteristics. We find that the key, common element in paging networks is the switch. All messages are processed through a single switch before being distributed for broadcast. In addition, most paging switches have large numbers of users assigned to them. Therefore, if the switch cannot receive messages or distribute them to the transmitters, all assigned users are potentially affected. On the other hand, we find that it would be difficult to determine the number of potential users affected by the failure of one or more transmitters. Also, a failure of a single transmitter would not cause a service outage if the paging messages were successfully completed through the use of other transmitters. Therefore, we find that the 900,000 user-minute reporting threshold is applicable only to failures of the switch, and not to failures of individual transmitters. If the switch is incapable of processing paging messages for at least 30 minutes and at least 900,000 user-minutes are thereby potentially affected, then the paging provider will be required to report the outage to the Commission.

29. *B. Related Criteria for Wireless Communications.* To measure the extent of wireless service system degradation, in the *NPRM* we proposed to require the use of blocked calls instead of using assigned telephone numbers as a proxy for the usefulness of the system to users. In the wireless telephony service, a call is deemed ''blocked'' whenever the Mobile Switching Center (''MSC'') cannot process the call request of an authenticated, registered user. Call blocking can result from a malfunction or from an overloaded condition in the wireless service network. Usually when calls are blocked, users newly attempting to access the system cannot be registered on the system until the underlying problem is corrected. Because wireless service networks typically provide user access through several MSCs, an outage on a single MSC affects only those subscribers served by that MSC. Accordingly, under our proposal, call blocking on a single MSC would be reportable if it were to result in an outage of at least 30 minutes duration that meets or exceeds the 900,000 user-minute criterion.

30. To estimate the number of potential users affected by a significant system degradation of wireless service facilities, we proposed to require providers to determine the total call capacity of the affected MSC switch (or, in the case of a MSC that has more than one switch, the total call capacity of all switches in the affected MSC) and multiply the call capacity by the concentration ratio. Although the concentration ratio may vary among MSCs, we tentatively concluded that, on average, the concentration ratio used for determining the outage reporting threshold should be uniform to facilitate correlative analyses of outage reports from different wireless providers. Based upon discussions with telecommunications engineers and our understanding of typical traffic loading/switch design parameters, we proposed that the concentration factor be ten. Thus, a MSC switch that is capable of handling 3,000 simultaneous calls would have 30,000 potentially affected users (*i.e.*, $(3{,}000) \times (10) = 30{,}000$). We tentatively concluded that this concentration factor should adequately account for those users that are in the service area of the MSC and are thus eligible for immediate service. This factor would also take into account users that are assigned to the local home location register database for the MSC as well as potential visitors. Thus, under the general outage-reporting criteria that we proposed, wireless service providers would be required to report MSC outages of at least 30 minutes duration that potentially affect at least 900,000 user-minutes. The 900,000 minutes were calculated by multiplying the number of simultaneous calls the MSC can complete through the switch by the concentration ratio of 10, and then multiplying the result by the duration of the outage expressed in minutes. In the case of the preceding example, the calculation would be 3,000 multiplied by 10, or 30,000 users. 30,000 users multiplied by 30 minutes would equal 900,000 user minutes. That is, 3,000 (user switch capacity) multiplied by 10 (concentration ratio) equals 30,000 (number of potentially affected users). Then, 30,000 (number of potentially affected users) multiplied by 30 minutes (outage duration) equals 900,000 user-minutes. If the outage were to involve less than the full capacity of the switch, then that portion of the traffic that is disrupted would be calculated. For example, if a 3,000 user switch were operating at one-half of its capacity for one hour, during which the switch

could simultaneously serve a maximum of only 1,500 users, then the calculation would be 1,500 users multiplied by 10 = 15,000 potentially affected users. Then, 15,000 potentially affected users multiplied by 60 minutes would equal 900,000 user-minutes. This outage would meet the threshold and, therefore, would be required to be reported. We sought comment on this proposed addition to our rules and on whether there are specific types of wireless networks for which a concentration factor other than ten should be applied. As with CMRS paging providers, we also sought comment on possible alternative criteria for wireless service providers and approaches to measure the extent of the impact of system degradation that would yield useful outage data on which to base the development of best practices.

31. We further proposed to require the filing of an outage report whenever a MSC is incapable of processing communications for at least 30 minutes, without regard to the number of user-minutes potentially affected by the outage. Our reason for this specific proposal on MSC-outage reporting was based on our continuing need to be aware of the underlying robustness, as well as the overall reliability, of wireless networks. The MSC, in this regard, is a critical architectural component in wireless networks that is designed to address significant levels of traffic aggregation and call routing that is dependent upon SS7 signaling. We sought comment on these additional conclusions and further proposal.

32. In the *Report and Order,* after considering the comments filed with respect to our proposals, we have adopted modified outage-reporting criteria for wireless communications providers. First, we clarify that only those SMR providers that meet the definition of ''covered CMRS'' providers shall be required to submit outage reports. As explained in the *NPRM,* our intent is to include SMR providers that offer services interconnected with the PSTN and compete with cellular and PCS services. We believe that our clarification accurately depicts the SMR services to which we intend to apply outage-reporting requirements. Second, we find that there is a public interest need to determine the potential number of users that may be affected by an outage. As explained in the *NPRM* the current trend is for wireless users to replace their landline telephones with wireless service. The number of U.S. households that have completely cut the cord remains small. However, half of the wireless households report that wireless usage has replaced some, a significant amount or all of their regular telephone usage. In addition, wireless service providers are offering flat rate calling plans that encourages users to approximate wireline-calling patterns. Similar to wireline, there are many users who seldom make or receive wireless telephone calls, their main intent is to have communications available in case of an emergency. This reliance on wireless for emergency communications has reportedly increased in the wake of the September 11, 2001 terrorist attacks. In addition, in the immediate aftermath of these terrorist attacks, the volume of wireless communications traffic reached saturation levels, causing several wireless networks to become overloaded. In such situations, it is clear that the alternative proposed by some commenting parties, that we rely on either real-time or historical blocked call counts to determine whether an outage has reached the reporting threshold, would result in severe undercounts of the number of users that would have likely relied on wireless phones to attempt calls to reach emergency assistance or loved ones. Therefore, we find it imperative that the outage-reporting threshold rely on a more realistic method for calculating the number of users potentially affected by a wireless outage. The impact of an outage on the Nation's infrastructure and the growing reliance of first responders on wireless communications make the reporting of the number of potential users affected imperative to determine the robustness of the nation's wireless infrastructure. Although concentration ratios vary among MSCs, we believe that, on average, the concentration ratio used for determining outages should be uniform to facilitate correlative analysis of outage reports from different wireless providers. Based on discussions with telecommunications engineers and our understanding of typical traffic loading/switch design parameters, the *NPRM* proposed that the number be 10.

33. We conclude, however, that the concentration ratio should be reduced to 8 to account for the dynamic nature and the mobility of wireless telephony systems. The proposed concentration ratio of 10 was based on an analysis that assumed a presented load of 0.05 Erlangs/user, which is half the load presented to a typical wireline switch. We believed this assumption was justified in light of the fact that wireless phones, while gaining considerably in popularity, are still not complete substitutes for wireline telephone service. For example, because wireless users tend to be aware of remaining battery life, they may tend to shorten the average duration of their calls. Wireless calls can also terminate prematurely due to the uncertain nature of wireless coverage areas and dead spots. However, despite these issues, more recent information leads us to believe that more users are considering wireless service to be a complete substitute for wireline local exchange service, where issues like coverage area and battery life would weigh less on the average call duration, and that this trend is likely to continue. Hence, we find that our original assumption about the average load presented to a typical wireless switch was low but could increase in the future. After increasing the assumed presented load to a more realistic level, we conclude that the concentration ratio should be reduced to 8. Thus, a MSC switch that is capable of handling 3,750 simultaneous calls would have 30,000 potentially affected users (*i.e.*, $(3{,}750) \times (8) = 30{,}000$).

34. The comments help illustrate the complexities of developing a common method to estimate the number of potential users affected by an outage. The use of historical data will only account for the normal usage patterns of the MSC. Once a MSC is overloaded or is out of service there is no mechanism to count blocked calls. As a consequence, reliance on historical data would result in a gross underestimate of the number of roamers and the number of users who only use their wireless phones in an emergency. This underestimation of potential users through the use of historical data has been repeatedly illustrated during emergencies in which wireless usage has overloaded wireless networks. As one commenting party, the BloostonLaw Rural Carriers, concede, when a switch fails, all users assigned to the switch are potentially affected. We conclude that outage reports should account for all potential users, not just those users who normally use their phones.

35. The concentration ratio of 8 reflects the generic parameters that are routinely used in basic telecommunication traffic analysis. In practice, cellular and PCS networks strive to maintain not more than 2% blocking. The wireless design goal is to accommodate 2% blocking of calls during the busy hour. Similar statistical calculations are used to determine wireline switch capacity. During an *ex parte* meeting held on June 10, 2004, discussions with CTIA and other representatives of the cellular industry confirmed that wireless networks are designed to not permit more than 2%

blocking during the busy hour. This means that, on average, during the switch's busy hour, 2% of all calls presented to the switch will be blocked and 98% will be completed. Based on application of the 2% blocking factor and commonly accepted switch design parameters and principles, we find, first, that use of a concentration ratio to determine the call capacity of MSC switches is appropriate. Second, we find that the choice of 8 as the concentration ratio for determining the wireless outage-reporting threshold is also appropriate.

36. We conclude that application of a concentration ratio of 8 in determining the call capacity of MSC switches will not result in over counting users in rural areas. Finally, we find that the use of a common concentration ratio for all wireless networks will provide consistency, will be easy to understand and use, and, in turn, will best serve the public interest. In sum, we adopt a common concentration ratio of 8 based on our best engineering judgment as applied to the record before us. This concentration ratio corresponds to a service level approximately equal to a 2% blocking factor, for which wireless networks are designed. Accordingly, we have adopted our proposed method of determining the call capacity of a MSC, that is, the number of potential users = (MSC switch capacity) × (the concentration ratio of 8). We recognize, however, that this concentration ratio may change over time. As a consequence, we direct the Chief, Office of Engineering and Technology, to monitor the numerical value of the concentration ratio and advise the Commission if this value needs to be revised to more adequately reflect the number of potential users that are impacted by an outage.

37. *Outage Reporting Requirements for Cable Circuit-Switched Telephony.* Failures in various portions of cable network infrastructures can cause disruptions to cable circuit-switched telephony service. For example, failures within the cable distribution plant, the fiber distribution plant, cable headend systems, and voice terminating equipment, as well as failures within Local Exchange Carrier (''LEC'') facilities such as switches and other points within the PSTN can cause cable telephony to be disrupted. Circuit-switched telephony provided by cable operators has always been subject to our communications disruption reporting requirements, and outage reports have been filed by cable operators. Nonetheless, we proposed to amend § 63.100 to make it explicitly clear that cable circuit-switched telephony is subject to our service disruption reporting requirements. The current thresholds for reporting cable telephony outages are the same as those for wireline telephony—outages must last at least 30 minutes in duration and potentially affect at least 30,000 customers. We proposed to apply to cable telephony the same revised threshold-reporting criteria (30 minutes/900,000 assigned telephone number-minutes potentially affected) that we proposed for wireline telephony outage reporting and sought comment on this proposed addition to our rules. In the *Report and Order,* we adopted our proposed outage-reporting requirements for cable communications providers. We note that the customer base for circuit-switched telephony over cable may not be as large as the one over wireline and, hence, few cable outages might be reported. However, the reporting threshold that we adopted will capture outages when they are sufficiently long, and it is a more stringent threshold than the existing one. We do not find that the needs of homeland security warrant a different action at this time. Also, as we stated in the *NPRM,* we are not addressing VoIP or public data network outage reporting at this time.

38. *Outage Reporting Requirements for Satellite Communications.* Section 63.100 of our rules does not contain outage-reporting requirements that are applicable to satellite communications. We tentatively concluded in the *NPRM,* that because of the increasing role and importance of satellites in our national communications infrastructure, it would be prudent to require U.S. space station licensees and those foreign licensees that are providers of satellite communications to the American public to report all major failures. This would apply to satellites or transponders used to provide telephony and/or paging. Thus, our proposal did not include satellites or transponders used solely to provide intra-corporate or intra-organizational private telecommunications or solely for the one-way distribution of video or audio programming.

39. Satellite communications have space components and terrestrial components. The reporting requirements that we proposed cover all satellite communications outages, regardless of whether they result from failures in the space or terrestrial components. Specifically, we proposed to require the reporting of any loss of complete accessibility to a satellite or any of its transponders for 30 minutes or more. Such outages could result, from an inability to control a satellite, a loss of uplink or downlink communications, Telemetry Tracking and Command failures, or the loss of a satellite telephony terrestrially-based control center, and we regard such outages to be major infrastructure failures. Analogous to the cases of wireline, wireless, and cable communications, we also proposed to require the reporting of the loss, for 30 minutes or more, of any satellite link or its associated terrestrial components that are used to provide telephony and/or paging, whenever at least 900,000 user-minutes are potentially affected. We anticipated that the satellite provider's Network Operations Center would be aware of the loss of satellite system components and their potential impact on end users. For telephony and many paging networks, one user-minute would be defined as one assigned telephone number-minute.

40. The *Report and Order* adopted modified outage-reporting criteria for satellite communications. We are persuaded that FSS communications providers do not have a way to determine the number of end users nor the nature of the communications traffic that would be potentially affected by any given transponder failure. In addition, we find that MSS service providers are not likely to know how many end users are potentially affected during intermittent service disruptions. Nevertheless, we think it is important that major outages of satellite networks involving voice or paging services be reported. As a result, in the *Report and Order*, we adopted a two tier approach for reporting—one for satellite operators and one for satellite communications providers. In either of the satellite outage reporting tiers, we are applying our rules only to voice and paging communications. In many cases, the satellites may carry a mix of traffic that includes video or audio programming, or private network communications, which are not covered by these rules. We believe that it is important that we obtain information on any outages that meet our criteria if they could involve voice or paging communications. As a result, our reporting rules will not apply to satellites, satellite beams, inter-satellite links, MSS gateway earth stations, and satellite networks when those elements are used exclusively for non-covered services (that is, when they never are used to carry voice or paging communications). We believe this clarification will help satellite operators and satellite communications providers to determine more easily when reporting is required, and are modifying our rules accordingly. We are also modifying our rules to more clearly

distinguish between the requirements that apply to satellite operators and satellite communications providers.

41. As a first tier, all satellite operators will be required to report any outage of more than 30 minutes duration of the following key system elements: satellite transponders, satellite beams, inter-satellite links, or entire satellites. In addition, MSS satellite operators will be required to report any outage of more than 30 minutes duration at any gateway earth station. We recognize that several commenting parties have suggested that reporting requirements should apply only for service outages, not for equipment outages. They argue that satellite operators can often bring in-orbit spares into use or rely on other satellites in the network to provide coverage. While this may be true, we still believe that reporting should be required when key satellite system elements have failed for more than 30 minutes. Satellite systems in general are expensive and difficult to replace, and it can take a long time for replacement satellite systems to be manufactured and launched. Furthermore, use of in-orbit spares or other satellites in a network can have a significant impact on future satellite network redundancy and overall system capacity. Given the critical backup role that satellites systems play in the overall U.S. communications infrastructure, we believe it is essential that operators report outages of key satellite system elements.

42. We have adopted rules that identify the key satellite system elements, which would require reporting if there is an outage of more than 30 minutes duration, as satellite transponders, satellite beams, inter-satellite links, or entire satellites. We are also applying reporting requirements to MSS gateway earth stations if there is an overall gateway outage of more than 30 minutes duration. The reporting requirements will not apply to individual MSS gateway earth station outages where other earth stations at the gateway location are used to continue gateway operations within 30 minutes. Outage of any of the key satellite elements for an extended period could have a significant impact on the overall functioning of a satellite network and can affect system coverage, capacity and usability. They can also affect that ability of satellite systems to handle higher levels of emergency traffic if there is an outage elsewhere in the communications infrastructure. We note that this approach avoids the concerns raised by satellite operators that they could not determine the number of users or user-minutes that would be involved in an outage.

43. The second tier of our approach for satellite outage reporting is to require satellite communications providers to report outages that involve more than 900,000 user-minutes. We recognize that a FSS satellite operator may not know that an outage is even occurring when it involves the failure in a service provider's network that communicates with the FSS satellite. However, the satellite communications provider should know when such an outage occurs, and should be responsible for reporting that outage just as other non-satellite communications providers are required to do. We recognize that there may be cases, as raised by MSS operators, that a satellite communications provider doesn't know how many users may be potentially affected by the outage. This can be particularly true with the MSS operator is providing service both inside and outside the U.S. In those cases, we expect the satellite communications provider to determine whether reporting is required based on an estimate of how many users in the U.S. might be impacted and the amount of time those users lose service.

44. *Reporting of Major Infrastructure Failures.* The communications outage reports that we have received over the past ten years have provided significant insight into some of the major problems affecting circuit-switched voice communications. The infrastructure used to provide these services, however, is also used to provide many other services that are essential to Homeland Security and our Nation's economy. A tiny glimpse into the other uses of our Nation's communications infrastructure was provided in Verizon's network outage report covering the World Trade Center disaster on September 11, 2001. That report states that ''some 300,000 dial tone lines and some 3.6 million DS0 equivalent data circuits were out of service'' as a result of the damage. The ratio of more than ten times as many DS0-equivalent services using the infrastructure as dial tone lines is not unusual in a major metropolitan area. Most of the DS0-equivalent circuits are used to carry what are frequently called ''special services.'' While we have not previously required the reporting of communications outages that affected large numbers of special services, we need to recognize in our communications disruption reporting rules the continuously increasing importance of data communications throughout the United States. We tentatively concluded in the *NPRM* that our rules should be revised to account for certain important attributes of special services. Rather than collect information that is limited specifically to ''special services,'' however, we proposed to directly address the underlying issue and collect information on the potential impact on all communications services of major infrastructure failures.

45. *A. DS3 Minutes.* As a consequence, we proposed to establish additional outage-reporting criteria that would apply to failures of communications infrastructure components having significant traffic-carrying capacity. This requirement would apply to those communications providers for which we have already proposed outage-reporting requirements and would also apply to those affiliated and non-affiliated entities that maintain or provide communications networks or services on their behalf. We tentatively concluded that the threshold reporting criterion for such infrastructure outages should be based on the number of DS3 minutes affected by the outage because DS3s are the common denominator used throughout the communications industry as a measure of capacity.

46. In the *Report and Order,* after considering the comments, we adopted our proposal to require the reporting of all outages that last at least 30 minutes and affect 1,350 or more DS3 minutes. For example, if 45 or more DS3s are out of service for 30 minutes, an outage report must be filed. However, the quantity of DS3s affected in an outage is just one factor used to determine if the 1,350 DS3 minute threshold has been reached. Outages of longer duration will become reportable for fewer than 45 DS3s according to the 1,350 DS3 minute threshold. For example, a single DS3 that was out of service for 1,350 minutes would constitute a reportable outage. Similarly, an outage of two DS3s for 675 minutes would constitute a reportable outage, and so forth.

47. When a DS3 is part of a protection scheme such as a SONET ring, it will frequently switch to a protect-path within seconds of a failure in the primary path. The communication services being provided over the DS3 will not be immediately affected, *but they will no longer be protected.* Unfortunately, we have had a number of network outages reported where there are multiple failures on a SONET ring at different points in time, in one case five months after the initial failure. The second failure that occurs before the first failure is repaired causes the loss of all communications services being provided over the DS3. We therefore require that DS3s that switch to protect

be counted in DS3 outage minutes until such time as the DS3s are restored to normal service, including protection. An analogy would be to a two-engine airplane that can still fly with one engine. If one engine fails, the second (protection) engine keeps the plane flying but in an impaired state. Service is not restored to normal until both engines operate properly. Protected communications services are not restored to normal until both the primary and protect DS3s operate properly. In this same regard, if protection DS3s should fail while the primary DS3s are still working, services would not be immediately affected but the failed DS3 minutes are still counted toward the reportable trigger due to the loss of protection. Hence, we reject the proposed alternative that would exempt failures of DS3's that are part of a protection scheme.

48. A DS3 is a communications highway that has been put in place to carry traffic in a digital format. That traffic can range from simple alarm and control circuits, to voice circuits, to radio and television programs, to circuits carrying ATM or credit card transactions, to FAA flight control circuits, to Department of Defense circuits, to circuits transferring billions of dollars from one Federal Reserve Bank to another, to circuits critical to the operation of the stock and bond markets. Some DS3s that carry no traffic are built strictly as protection in the case of a failure of another DS3. We find it necessary to point out that our concern is with the loss of communication highways regardless of how lightly or heavily they may be loaded at the time of an outage. The actual impact of a DS3 failure is that a communications highway that is part of this nation's communications infrastructure is no longer available. We are not asking carriers to calculate the potential impact of a DS3 failure. For example, if a failed DS3 is the only working DS3 in an OC48 (with 48 possible DS3s), then the potential is for 48 DS3s to have failed. Likewise, if that same OC48 was riding one fiber in a 72-fiber cable that was cut, then the potential is for all of the fibers to be multiplexed at the OC48 level even if some of the fibers were actually dark. We only require that the working DS3s be counted, not those that could be potentially working.

49. A number of commenting parties suggested that only DS3 failures that should be reported are those where ''the service provider owns, operates and maintains the electronic terminal equipment at both end points.'' This is an extremely restrictive provision that would be very difficult for the ''service provider'' to implement. The American National Standard for Telecommunications, T1.238–2003 (Information Interchange—Structure for the Identification of Telecommunications Facilities for the North American Telecommunications System), used to identify DS3s, does not even include data elements that identify who owns, operates or maintains the electronic terminal equipment at the ends of DS3s. The Commission is concerned with understanding infrastructure failures that might suggest that adequate facilities are not being provided to serve the communications needs of the people of the United States, and not with who owns, operates and maintains the electronic terminal equipment. Hence, we reject the suggestion that the only DS3 failures that should be reported are those where ''the service provider owns, operates and maintains the electronic terminal equipment at both end points.''

50. We also clarify that we have no intention of asking service providers to report individual DS3 outages where the customer has deliberately turned the DS3 off, or where the customer's equipment has failed. To do so would be unfair to the communications provider. However, if that same DS3 goes through a multiplexer, a digital cross-connect, a fiber cable or other network component that fails then it shall be counted as one of the many DS3s that are affected. The determination that a customer intentionally or unintentionally caused a DS3 failure typically cannot be made until after service is restored.

51. We agree with the suggestion that the service provider whose infrastructure network component causes a reportable DS3 outage, or has maintenance responsibility for the point of failure, should submit an outage report. But we will not limit the reporting responsibility to such providers only. In this regard, we recognize that any given failure may trigger multiple outage reports. We have made the reporting process very simple so as to readily accept and process multiple reports triggered by the same event such as a fiber cable cut. The individual fibers in the cable may be leased to different organizations, and the working DS3s riding on each fiber may be used to provide a wide variety of services. If a reportable quantity of calls is blocked due to the cut fiber then that should be reported. Likewise, if the cut fiber also causes a reportable quantity of wireline user minutes to be potentially affected then that should also be reported. The value of this system of outage reporting is that it is most likely to reveal how failures in one part of a network can trigger failures in other parts of the same network or in other networks. The needs of homeland security and the long-term goal of improving network security and reliability demand no less.

52. We disagree with AT&T's suggestion that in cases in which DS3s are the subject of a Service Level Agreement, they should not be counted in DS3 outages. The presence or absence of a SLA is not shown in the records described in ANSI T1.238–2003 and such information would only be readily available to the parties to the contract. Communications service providers routinely contract with third party vendors for equipment and various services, but the service provider always maintains ultimate responsibility for its network operations and services. Thus, all DS3s, regardless of whether they are the subjects of SLAs, shall be included in the DS3 minute calculation. We disagree with BellSouth's assertion that our proposal on outage reporting for major infrastructure failures would result in the indirect regulation of the ''Internet and other data services'' that should be free of regulation. Internet and data services are two examples of hundreds of services that can be, and are, provided on DS3s. We have no intention of requiring every carrier to examine all of the services that were provided on every failed DS3 and then deciding if it is reportable. That would be an almost impossible burden for the carriers and would unacceptably extend the amount of time that would be required before an outage would be reported. If a DS3 fails it shall be counted regardless of the services it was providing at the time of the failure. We also disagree with the contention that a ''working DS3 should be defined as one that has more than 10% of the DS0s in use, *i.e.,* 67 DS0s'' and the SBC suggestion to increase the threshold to 400 DS0s. Many of the working transport DS3s being are not demultiplexed down to the DS2, DS1, or DS0 level within the confines of the reporting carrier so it would be almost impossible to determine how many DS0, or DS0-equivalent, channels were in use at the time of a failure. The fact that a DS3 is working, as we have defined working, is sufficient for it to be counted as part of this infrastructure.

53. We also disagree with the suggestions that various labels, such as ''access,'' ''customer,'' ''interoffice,'' or ''infrastructure'' be placed on DS3s and that they then be counted, or not, depending on the label. None of the labels suggested by the commenting

parties are clearly defined and they are not necessary to identify a failure. We are not asking telecommunications providers to apply various labels to working DS3s and then to count them, or not count them, based on those labels. The fact that a DS3 is working, as we have defined ''working,'' is sufficient for it to be counted as part of the infrastructure.

54. We observe that Nextel's comments regarding problems it has had with T–1 (DS1) lines provided by ILECs illustrate just how dependent wireless carriers are on the services provided by wireline carriers. While we are concerned with the DS1 problems identified by Nextel we decline to include DS1s in the outage reporting requirements at this time.

55. We also observe that, in the case of a ''mid-span meet,'' we require, at a minimum, that an outage report be submitted by the provider whose network element failed or who ''has maintenance responsibility for the point of failure.'' Other service providers may also report the same failure if their failed services met one of the other reporting thresholds such as blocked calls or user minutes. MCI recognizes that ''a single outage situation could * * * give rise to two [or more] reportable events.'' We recognize this possibility and have made the electronic reporting of outages as simple as possible. The advantage of multiple reports of the same outage under these circumstances is that: (i) Outages can be reported more rapidly without provider confusion as to who should report; and (ii) we will have a much better understanding of the overall impact of a given outage. We further observe that several commenting parties portray DS3 outage reporting as far more complex a matter than we intend it to be. These concerns are misplaced. We have absolutely no intention of placing a burden on the DS3 provider to determine just what services were being carried, nor of determining just how many DS0s, if any, might have been in use, at the time of the outage, nor of determining the ''real impact on end users'' (an almost impossible task). Our concern is with the failure of working DS3s regardless of the services being carried or the fill at the time of the failure. In this regard, while a DS3 has a capacity of 672 DS0 communication channels, this is not relevant to infrastructure outage reporting since it is only one of hundreds of possible services that can be carried in a DS3. A DS3 is simply a unit of communications capacity that can be and is used to carry hundreds of different services, and the services that are actually carried can vary from hour to hour, if not moment by moment.

56. *B. Signaling System Seven (''SS7'').* In the *NPRM*, we observed that Signaling System 7 (SS7) networks provide information to process, and terminate, virtually all domestic and international telephone calls irrespective of whether the call is wireless, wireline, local, long distance, or dial-up telephone modem access to ISPs. SS7 is also used in providing SMS text messaging services, 8XX number (*i.e.,* toll free) services, local number portability, VoIP Signaling Gateway services, 555 type number services, and most paging services. Currently our rules do not require outage reporting by those companies that do not provide service directly to end users. In addition, even for companies currently subject to outage reporting requirements, no threshold reporting criteria are currently based on blocked or lost SS7 messages. Implicit in this statement is that a blocked or lost signaling message will result in a blocked or lost call. There are numerous types of failures that have already resulted in lost or blocked signaling messages. For example, SS7 failures have occurred: when both A links were cut; when A links were out of service due to a common power pack failure; when a timing problem on both A links isolated a central office; when all B links became overloaded; when a common software problem caused a pair of STPs to fail; when a translation error caused both STPs to fail; when a common table entry error caused both SCPs to fail; and when a software upload problem in both STPs resulted in SS7 service failure.

57. As a consequence, the *NPRM* proposed the addition of SS7 communications disruption reporting requirements. To be more specific, all providers of Signaling System 7 service (or its equivalent) would be required to report those communications disruptions of at least 30 minutes duration for which the number of blocked or lost ISDN User Part (ISUP) messages (or its equivalent) was at least 90,000.

58. In the *Report and Order,* we agree with most commenting parties that third-party SS7 providers should have to report an outage if the outage is big enough so that one or more affected carriers would also have to report. Having both the third party SS7 providers report as well as the affected communications service providers will help us to understand underlying vulnerabilities in these interconnected signaling networks. We continue to find it important for carriers to report outages that affect their customers even if the actual cause of the outage did not occur in their network or was not caused by them. This is the case with our current rule, and we find no reason to change the rule in this regard. The Commission continues to need outage information irrespective of whether culpability has been definitely determined. In the absence of such outage information, it may not be possible to determine with rapidity whether further action is necessary. Under the requirements that we have adopted, if several small carriers are simultaneously affected by an outage in a third-party SS7 provider's network, the third-party SS7 provider must report the outage if it meets the threshold criteria.

59. We shall require carriers and third party SS7 providers with access to blocked call information to report each outage in an SS7 network that lasts 30 minutes and either generates 90,000 blocked calls based on real-time traffic data or would result in 30,000 lost calls based on historic carried loads. Blocked or lost call information should be readily available for database outages (*e.g.,* ''800-number'' service outages). Also, third party SS7 providers may be able to use their link monitoring system to obtain blocked call data for other outages. In addition, third party SS7 providers could ask for traffic data from the affected carriers. Whenever blocked or lost call information is available, that information must be used to determine whether the reporting-threshold criteria have been met. For situations in which blocked or lost call information is unavailable, we had proposed to use a count of lost ISUP messages as a surrogate for a count of lost or blocked calls. We agree with Alcatel, however, that there is an equally acceptable, more straightforward, and less burdensome alternative that will achieve this same goal. That is, whenever a third party SS7 provider cannot directly estimate the number of blocked calls, the provider must count the number of lost MTP messages (level 3). A count of 500,000 real-time lost MTP messages shall be used as a surrogate for 90,000 real-time blocked calls, and a count of 167,000 lost MTP messages on a historical basis shall be used as a surrogate for 30,000 lost calls based on historic carried loads. (Alcatel estimates that there are between 5 and 6 times as many MTP messages as there are call attempts.) Additionally, we clarify that whenever a provider relies on available historic carried call load data, that data must be for the same day of the week and the same time of day as the outage,

and for a time interval not older than 90 days preceding the onset of the outage. Finally, we must account for situations where, for whatever reason, real-time and historical data are unavailable to the provider, even after a detailed investigation. In such cases, the provider must determine the carried load based on data obtained in the time interval between the onset of the outage and the due date for the final report; this data must cover the same day of the week and the same time of day as the outage. Justification that such data accurately estimates the traffic that would have been carried at the time of the outage had the outage not occurred must be available on request.

60. *Electronic Filing and New Reporting Process.* Consistent with authority granted by the Communications Act of 1934, as amended, and in furtherance of the objectives of the Government Paperwork Elimination Act, 44 U.S.C. 3504 note, Public Law 105–277, Div. C, Title XVII, 112 Stat. 2681–749 (1998), we proposed in the *NPRM* to require that communications outage reports be filed electronically with the Commission. (An illustrative depiction of the proposed data collection fields was set forth in Appendix C of the *NPRM.*) Electronic filing would have several major advantages for the Commission, reporting communications providers, and the public. For example:

- Providers would be able to file reports more rapidly and more efficiently.
- Information would be updated immediately. The expenses and efforts that are associated with the outage reporting process should be reduced substantially which, in turn, should result in continuing productivity gains.
- Changes to outage report data should be more easily accessible by communications providers, the public, and the Commission. Thus, reporting entities should be able to file initial and final report information more easily, and interested parties should also be able to access this information more quickly.
- Changes to electronic input form(s) can be implemented more quickly. Two of the purposes of the reliability database are to help identify causes of outages and to refine best practices for averting failures in communications networks. As networks evolve and experience is gained, the data fields can be more easily revised to improve the quality of the information received to reflect changes in communications infrastructures and management procedures.
- In addition, security precautions can be implemented to authenticate access by authorized users.

61. Our current outage reporting rules do not require, or even refer to, electronic filing (other than by facsimile). Although it is understandable, in retrospect, that our rules did not incorporate electronic filing because the Internet was just beginning to expand in 1992, we tentatively concluded that the time has now arrived to implement electronic filing procedures. These procedures should not only facilitate compliance with the objectives that are expressed in the Government Paperwork Elimination Act but also should improve service to the public, enhance the efficiency of our internal operations, and virtually eliminate any burden that would be associated with complying with the proposed reporting requirements. Irrespective of any of the reporting requirements that we proposed, we expect that communications firms will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations—and will do so for service disruptions that are considerably smaller than those that would trigger the reporting criteria that we proposed. As a consequence we believe, in the usual case the only burden associated with the reporting requirements contained in this *NPRM* will be the time required to complete the initial and final reports. We anticipated that electronic filing, through the type of illustrative template that we appended to the *NPRM*, will minimize the amount of time and effort that will be required to comply with the rules that we have adopted. Electronic records and signatures are legally binding to the same extent as if they were filed by non-electronic means. *See generally,* Sections 101–106 of the Electronic Signatures in Global and National Commerce Act, Public Law 106–229, June 30, 2000, 114 Stat. 464, codified at 15 U.S.C. 7001–7006.

62. We recognized in the *NPRM* that it may, however, be desirable for other reasons to have alternative ways by which outage reports can be filed with this Commission. Accordingly, we requested comment on whether there are any circumstances under which electronic filing would not be appropriate and, if so, on what alternative filing procedures should be used in such circumstances. Finally, we recognized that as experience is gained with the electronic filing of outage reports, modifications to the filing template may be necessary to fully implement an automated outage reporting system that will maximize reporting efficiency and minimize the time for providers to prepare, and for the Commission staff to review, outage reports. Accordingly, we proposed to delegate authority to the Chief, Office of Engineering and Technology to make the revisions to the filing system and template that are necessary to achieve these goals.

63. In the *Report and Order*, we agree with virtually all suggestions made about the electronic reporting process. That is, we agree that it is necessary to provide a method for time and date stamping all report submissions. The current process date stamps all faxed transmissions, with electronic time and date stamping occurring virtually automatically. All submissions will have a unique identifier or control number. We agree that companies will be allowed to prepare, save, and update draft reports to allow for management review and revision. The draft reports should not be available to anyone other than the reporting company since the information may still be tentative. We will permit providers to print drafts and reports submitted to the Commission. We plan on allowing only a small number of users from each company to submit and edit initial and final reports for security reasons. We are currently investigating the proper level of security for the electronic system. This may include digital signatures and encryption. We will allow for the appropriate withdrawal of the two-hour notification reports without requiring a formal retraction letter. We agree that companies need to be able to withdraw notifications and initial reports in legitimate circumstances (such as where a notification was filed under the mistaken assumption that a reportable outage had occurred). However, the system will keep copies of all submissions. The electronic system will be able to deliver a filed copy.

64. We adopted the suggestion that our outage-reporting template contain a link to a website for accessing the list of Best Practices. Since several reporting fields are related to the use of Best Practices, it is essential to make it easy for users to access the relevant Best Practices. We have adopted suggestion that the template indicate whether the report is an initial report or a final report. Clearly, we need to be able to distinguish between initial and final reports. The electronic template will have a field to designate the appropriate time zone in which the outage occurred, as suggested by BellSouth. This will make it easier to compare outages that occurred nearly simultaneously across the country. We plan to have instructions for all the fields. We

disagree that the outage template is too comprehensive noting that we received suggestions for additional fields. We disagree with the comments that suggest that it is inappropriate and wasteful for the Commission to require different entities to file reports with respect to the same underlying outage. We have historically required all entities to report the same event if those companies cross one of our thresholds. There have been some instances of multiple filings on the same event in the past, but typically the number of reports per such events does not exceed two. Requiring all companies that cross a relevant threshold to report is simpler and, in the long run, less burdensome to all. And, it facilitates faster reporting which is essential for homeland security. If a communications provider experiences a single outage that satisfies several reporting thresholds (*e.g.*, wireline, SS7 and DS3), the provider will be required to file only one report for the outage. The only occasions that a communications provider would have to file an outage report when it has not experienced an outage that satisfies the general threshold criteria based on the 30-minute/900,000 user-minute common metric are when it experiences outages based on the additional threshold criteria that we are adopting (*e.g.*, for DS3 or SS7). Generally, on only rare occasions, the modified rule could result in the filing of an additional report on the same outage event; in the case of SS7 outages, for example, an additional report could be required as a result of an outage in a third-party SS7 network. Finally, analysis of these additional reports could be exceedingly important in understanding how reliability in one network affects the reliability of other networks. The insights gleaned from such analysis could contribute greatly to increasing the reliability and security of the nation's telecommunications infrastructure and to furthering our Nation's homeland security.

65. With respect to the issue of potential duplication of the efforts of the states, we emphasize that we do understand the potential value of having one outage template instead of 50 different templates. Individual states, however, may have their own unique needs that could necessitate their collection of outage-reporting data that may differ from that needed by the Commission. It is, however, possible that our reporting requirements may provide a common framework that will be of assistance to state, commonwealth and territorial governments; and which may, therefore, serve to reduce the number of outage reports that might otherwise be required by those jurisdictions. Furthermore, we anticipate increased collaboration with DHS, state and local governments, and expert industry groups on matters of network reliability, homeland security, and emergency communications. The fruits of this collaboration will require that adjustments be made to our outage-reporting template and filing system on an expeditious basis. The most efficient manner in which the Commission can address this issue is to delegate authority to the Chief, Office of Engineering and Technology, to make necessary changes to the template and filing system.

66. *Conclusion.* We have adopted outage-reporting requirements for wireline, cable, satellite, and terrestrial wireless communications providers, Signaling System 7 providers, and ''affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.'' We conclude that this action will best serve the public interest by enabling the Commission to obtain the necessary information regarding services disruptions in an efficient and expeditious manner. This action addresses the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well being of our Nation. This action takes into account the increasing importance of non-wireline communications, as well as wireline communications, in the Nation's communications networks and critical infrastructure.

Final Regulatory Flexibility Analysis

67. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking* in this proceeding.[2] The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed in the FRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

68. *A. Need for, and Objectives of, the Report and Order:* The purpose of the *Report and Order* is to extend the Commission's requirements for reporting communications disruptions to communications providers that are not wireline carriers.[4] Previously, such requirements have applied to wireline and cable telecommunications common carriers only.[5] Now they will additionally apply to all communications providers that offer circuit-switched telephony, satellite communications providers, Signaling System 7 providers, terrestrial wireless communications providers, and affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications. We have taken this action because we recognize the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well-being of our Nation, especially in view of the increasing importance of non-wireline communications in the Nation's communications networks and critical infrastructure. We also are moving the outage-reporting requirements from part 63 of our rules to part 4 as a way to take cognizance that, although these requirements were originally established within the telecommunications common carrier context, it is now appropriate to adapt and apply them more broadly across all communications platforms to the extent discussed in the *NPRM*. Further, in an effort to promote rapid reporting and minimal administrative burden on covered entities, we are streamlining compliance with the reporting requirements through electronic filing with a ''fill in the blank'' template and by simplifying the application of that rule. In addition, we are adopting a common metric that would establish a general outage-reporting threshold for all covered communications providers.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *In the Matter of* New *Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04–35, *Notice of Proposed Rulemaking*, FCC 04–30, 19 FCC Rcd 3373 (2004) (''*NPRM*''), at ¶ 56 and Appendix C.

[3] *See* 5 U.S.C. 604.

[4] By the term ''communications provider'' we mean an entity that provides two-way voice and/or data communications, and/or paging service, by radio, wire, cable, satellite, and/or lightguide for a fee to one or more unaffiliated entities.

[5] *See* § 63.100 of the Commission's rules currently requires only wireline and cable telecommunications common carriers to report significant service disruptions. Section 63.100 of the Commission's rules, which is codified at 47 CFR 63.100, was first adopted in 1992. *Notification by Common Carriers of Service Disruptions*, CC Docket No. 91–273, *Report and Order*, 7 FCC Rcd 2010 (1992); *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 8517 (1993); *Second Report and Order*, 9 FCC Rcd 3911 (1994); *Order on Reconsideration of Second Report and Order*, 10 FCC Rcd 11764 (1995).

These actions are designed to allow the Commission to obtain the necessary information regarding services disruptions in an efficient and expeditious manner and achieve significant concomitant public interest benefits.

69. The general outage-reporting threshold criteria that we adopted specify that those outages of at least 30 minutes duration that potentially affect 900,000 user-minutes must be reported. This metric is the mathematical result of multiplying the number of end users potentially affected by the outage and the outage's duration expressed in minutes. For example, a 30-minute outage that potentially affects 30,000 users meets the 900,000 user-minute threshold for reporting (*i.e.*, 30,000 users × 30 minutes = 900,000 user-minutes). Also, a 60-minute outage that potentially affects 15,000 users meets this threshold (*i.e.*, 15,000 users × 60 minutes = 900,000 user-minutes). We also adopted specific outage-reporting thresholds for 911/E911 services and for other special offices and facilities. Major airports have always been included as special offices and facilities, and we are expanding this definition to include all of those airports that are primary (PR), commercial service (CM), or reliever (RL) airports as listed in the FAA's National Plan of Integrated Airport Systems (NPIAS) (as issued at least one calendar year prior to the outage). We also specified thresholds for major infrastructure failures, such as those involving the loss of DS3 facilities or Signaling System 7 messages.

70. *B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA:* One comment—by the Rural ILECs [6]—was filed directly in response to the IRFA. The Rural LECs state that the outage reporting rules that we proposed in the *NPRM*—which called for detailed, initial communications outage reports to be filed within 120 minutes of the discovery of the outage—''could compromise the ability of a small, rural ILEC to restore service during the crucial hours immediately after the onset of an outage. Indeed, compliance with the proposed rules may be technically infeasible in situations where faxes cannot be sent and the Internet cannot be accessed.'' [7] To minimize the impact on small, rural companies, they suggest that the Commission exempt those companies that are already subject to state outage reporting requirements. They further suggest that the Commission permit those companies that are not subject to such state requirements to report outages orally within 24 hours of the discovery of a reportable outage.[8]

71. Based on these comments and the more general comments of other parties in the proceeding, we are adopting modifications to our proposed rule that, we believe, will adequately address the concerns raised by the Rural LECs. Specifically, instead of requiring the filing of a detailed, initial outage report within 120 minutes of discovery of the outage, we are requiring the filing of only a bare-bones Notification disclosing the name of the Reporting Entity; the Date and Time of onset of the outage; a Brief Description of the Problem; the particular Services Affected; the Geographic Area affected by the outage; and a Contact Name and Contact Number by which the Commission's technical staff may contact the reporting entity. We will not require the more detailed initial outage report to be filed until 72 hours after discovery of the outage. The final communications outage report will be due 30 days after discovery of the outage, as originally proposed. This action will enable communications providers to focus on their repair and restoration efforts immediately after onset of the outage. The bare-bones Notification that we require will not substantially divert them from these efforts but will alert the Commission to the possibility that a major communications might be occurring. The 72-hour time frame for filing initial outage reports is more generous than the 24-hour time frame suggested by the Rural ILECs. The notification will be submitted electronically, but if the outage makes this impossible, other written alternatives (such as FAX or courier) will suffice. The initial and final reports will be filed electronically. We believe that electronic filing will minimize the burdens imposed on all reporting entities, including those (if any) which might be considered to be small businesses. We do not adopt the Rural ILECs suggestion that we exempt those small, rural companies that are subject to state outage-reporting requirements. We believe that there is a legitimate need for the national, uniform outage-reporting system that we adopted and which covers various communications platforms. This system is designed to address the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well being of our Nation. Nonetheless, as the Commission, the Department of Homeland Security, and appropriate State authorities gain experience with the outage-reporting system that we adopting, the Commission and the States may make further refinements in their systems to improve the analytic results that can be gleaned from them and to eliminate any unnecessary duplication.

72. *C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply:* The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[9] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [10] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[11] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[12]

[6] The Rural ILECs include the following 33 rural incumbent local exchange carriers that state that they have fewer than 1,500 employees and should therefore be considered to be small businesses: Big Sandy Telecom, Inc.; Bluestem Telephone Company; C–R Telephone Company; Chautauqua and Erie Telephone Corporation; China Telephone Company; Chouteau Telephone Company; Columbine Telecom Company; Community Service Telephone Company; Ellensburg Telephone Company, Inc.; Fremont TelCom; Great Plains Communications, Inc.; GTC, Inc.; Kennebec Telephone Company; K&M Telephone Company; Maine Telephone Company; Marianna and Scenery Hill Telephone Company; Northland Telephone Company of Maine, Inc.; Odin Telephone Exchange, Inc.; Peoples Mutual Telephone Company; RC Communications, Inc.; Roberts County Telephone Cooperative Association; Sidney Telephone Company; Standish Telephone Company, Inc.; STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont; Sunflower Telephone Co., Inc.; Taconic Telephone Corp.; The El Paso Telephone Company; The Columbia Grove Telephone Company; The Nebraska Central Telephone Company; The Orwell Telephone Company; Waitsfield-Fayston Telephone Company; Yates City Telephone Company; and YCOM Networks, Inc. See Rural ILECs Comments on the IRFA at 1 & Attachment A.

[7] Rural ILECs Comments on the IRFA at 1–2.

[8] *Id.* at 2.

[9] 5 U.S.C. 604(a)(3).

[10] 5 U.S.C. 601(6).

[11] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[12] 15 U.S.C. 632.

73. We further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to the *Report and Order*. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its ''Trends in Telephone Service'' report.[13] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[14] Paging,[15] and Cellular and Other Wireless Telecommunications.[16] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

74. We have included small incumbent local exchange carriers in this present RFA analysis. As noted, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [17] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[18] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

75. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[19] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[20] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[21] Thus, under this size standard, the majority of firms can be considered small.

76. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[22] According to Commission data,[23] 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

77. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[24] According to Commission data,[25] 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

78. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[26] According to Commission data,[27] 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

79. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging [28] and Cellular and Other Wireless Telecommunications.[29] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data,[30] 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees.[31] Consequently, the Commission estimates that most wireless service providers are small

[13] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Aug. 2003) (hereinafter ''Trends in Telephone Service''). This source uses data that are current as of December 31, 2001.

[14] 13 CFR 21.201, North American Industry Classification System (NAICS) code 517110.

[15] 13 CFR 121.201, NAICS code 517211.

[16] 13 CFR 121.201, NAICS code 517212.

[17] 15 U.S.C. 632.

[18] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b).

[19] 13 CFR 121.201 (1997), NAICS code 513310 (changed to 517110 in October 2002).

[20] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued October 2000).

[21] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[22] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[23] ''Trends in Telephone Service'' at Table 5.3.

[24] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[25] ''Trends in Telephone Service'' at Table 5.3.

[26] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[27] ''Trends in Telephone Service'' at Table 5.3.

[28] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517211.

[29] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

[30] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, (August 2002).

[31] *Id.*

entities that may be affected by the rules and policies adopted.

80. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[32] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.''[33] These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[34] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[35] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses would have included the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers would have been small entities that could be affected by the rules and policies adopted herein. The results of Auction No. 35, however, were set aside and the licenses previously awarded to NextWave, which had qualified as a small entity, were reinstated. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

81. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.*[36] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[37] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

82. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[38] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size

[32] *See* Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 61 FR 33859 (July 1, 1996); *see also* 47 CFR 24.720(b).

[33] *See* Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 61 FR 33859 (July 1, 1996).

[34] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

[35] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997). *See also* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97–82, Second Report and Order, 62 FR 55348 (Oct. 24,1997).

[36] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP 93–253, *Second Report and Order and Second Further Notice of Proposed Rulemaking,* 65 FR 35875 (June 6, 2000).

[37] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[38] 47 CFR 90.814(b)(1).

unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

83. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees.[39] According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year.[40] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more.[41] Thus, under this size standard, the majority of firms can be considered small.

84. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[42] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[43] The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[44] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

85. *Cable and Other Program Distribution.*[45] This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[46] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted.

86. *Cable System Operators (Rate Regulation Standard).* The Commission has developed a size standard for small cable system operators for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[47] Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.[48] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a ''small system,'' for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers.[49] The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

87. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [50] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, a cable operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[51] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450.[52] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators as defined in the Communications Act of 1934.

88. *Satellite Telecommunications Providers.* The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 or less in average annual receipts.[53] For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.[54] Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

89. *Signaling System 7 (SS7) Providers.* The Commission has not developed a definition of small entities applicable to Signaling System 7 providers. We shall apply the SBA's small business size standard for Other Telecommunications, which identifies as small all such companies having $12.5 million or less in annual receipts.[55] We believe that there are no more than half-a-dozen SS7 providers and doubt that any of them have annual receipts less then $12.5 million. In the IRFA in this proceeding, we assumed that there may be several SS7 providers that are small businesses which could be affected by the proposed rules and requested comment on how many SS7 providers exist and on how many of these are small businesses that may be affected by our proposed rules. No comments provided this information. We conclude that none of these providers are small businesses.

90. *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*: The rules adopted in this

[39] 13 CFR 121.201, NAICS code 517211 (changed from 513321 in October 2002).

[40] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513321 (issued October 2000).

[41] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[42] The service is defined in 47 CFR 22.99 of the Commission's Rules.

[43] BETRS is defined in 47 CFR 22.757 and 22.759 of the Commission's Rules.

[44] 13 CFR 121.201, NAICS code 517212.

[45] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513220 (changed to 517510 in October 2002).

[46] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

[47] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket No. 92–266 and 93–215, 10 FCC Rcd 7393 (1995), 60 Fed. Reg. 10534 (February 27, 1995).

[48] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[49] 47 CFR 76.901(c).

[50] 47 U.S.C. 543(m)(2).

[51] 47 CFR 76.1403(b).

[52] *Cable TV* Investor, *supra* note 48.

[53] 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in Oct. 2002).

[54] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513340 (issued Oct. 2000).

[55] 13 CFR 121.201, NAICS code 517910.

Report and Order require telecommunications providers to report those outages that meet specified threshold criteria. These criteria are largely determined by the number of end users potentially affected by the outage and the duration of the outage, which generally must be at least 30 minutes. Under the prior rules, which have applied only to wireline carriers and cable television service providers that also provide telecommunications service, only about 200 outage reports per year from all reporting sources combined were filed with the Commission. In the IRFA, we stated that the proposed revisions to the threshold criteria were not expected to alter the number of outage reports filed annually to a significant degree. Nevertheless, the adopted rules do extend the outage reporting requirements to telecommunications providers that are not currently subject to these rules. Thus, in the IRFA we anticipated that more than 200 outage reports will be filed annually, but estimated that the total number of reports from all reporting sources combined will be substantially less than 1,000 annually. We noted then, and find now, that, occasionally, the outage reporting requirements could require the use of professional skills, including legal and engineering expertise. Without more data, the IRFA concluded that we could not accurately estimate the cost of compliance by small telecommunications providers. But irrespective of any of the reporting requirements that were proposed, the IRFA expected that telecommunications providers will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations—and will do so for service disruptions that are considerably smaller than for disruptions that would trigger the proposed reporting criteria. As a consequence, the IRFA tentatively found that in the usual case, the only burden associated with the proposed reporting requirements would be the time required to complete the initial and final reports. The IRFA anticipated that electronic filing using a ''fill in the blank'' template would minimize the amount of time and effort that would be required to comply with the proposed rules. The IFRA sought comment on the types of burdens telecommunications providers would face in complying with the proposed requirements. Entities, especially small entities, were encouraged to quantify the costs and benefits of the proposed reporting requirements. In addition, in our initial analysis pursuant to the Paperwork Reduction Act of 1995, we estimated that the Number of Respondents would be 52, the Estimated Time per Response would be 5 hours, the Frequency of Response would be ''on occasion,'' the Total Annual Burden would be 1,040 hours, and the Total Annual Costs would be $41,600. We sought comment on the PRA, including on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. *See Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04–35, *Proposed Rule*, FCC 04–30, 69 FR 15761 (March 26, 2004).

91. The Rural ILECs [56] were the only parties to file direct comments on the IRFA. In these comments, they state that our original proposal, which would have required small communications providers to file detailed, initial outage reports within 120 minutes of their discovery that an outage was occurring, would be overly burdensome. They explain that their employees who diagnose outages and then work to repair and restore their communications networks are the same employees who would be called upon to supply the information needed for the initial outage reports and/or to file those reports with the Commission. Therefore, the Rural ILECs conclude that our proposal could compromise their ability to restore service during the critical hours immediately after the onset of an outage. In addition, they state that compliance with the proposed rules may be technically infeasible in situations where faxes cannot be sent and the Internet cannot be accessed. To address these concerns, the Rural ILECs suggest that the Commission exempt those companies that are already subject to state outage reporting requirements. They also suggest that the Commission allow those companies that are not subject to state reporting requirements to report outages orally to the Commission within 24 hours of their discovery of a reportable outage. Taking these comments, as well as the general comments of other parties into account, the Commission, in the *Report and Order*, adopted a modified outage-reporting rule that is more flexible than the one proposed in the *NPRM.* Within 120 minutes of discovering an outage, each reporting entity, whether large or small, will be required to submit to the Commission a Notification that contains only a minimal amount of data, that is, the name of the Reporting Entity; the Date and Time of onset of the outage; a Brief Description of the Problem; the particular Services Affected; the Geographic Area affected by the outage; and a Contact Name and Contact Number by which the Commission's technical staff may contact the reporting entity. We anticipate that reporting entities will ordinarily not need more than 15 minutes to file a notification with the Commission. The more detailed initial report, with which Rural ILECs expressed concern, will not be required to be filed until 72 hours after the outage was discovered. Further, all filings are to be made electronically, thereby minimizing the burden on all reporting entities. But, if a specific outage situation prevents the Notification from being filed electronically or by FAX, other written means of filing (such as the use of a courier) will be acceptable. Thus, we find that our action will enable communications providers to focus on their repair and restoration efforts immediately after onset of the outage. The bare-bones notification that we require will not substantially divert them from these efforts but will alert the Commission to the possibility that a major communications might be occurring. In addition, the alternative, 72-hour time frame for filing initial outage reports is more generous than the 24-hour time frame suggested by the Rural ILECs. Thus, we do not find that the public interest would be served by the Rural ILECs suggestion to permit outage information to be reported orally within 24 hours. The quality of information that would be submitted orally is likely to be less accurate and less uniform than that submitted electronically through the ''fill in the blank'' template which we have adopted. Also, the reporting burden would likely not decrease as a result of oral submissions, because of the speed that e-filing permits and because of the greater likelihood that the Commission would need to ask oral submitters to correct and supplement incorrect and incomplete orally-submitted information.

92. We also do not adopt the Rural ILECs suggestion that we exempt those small, rural companies that are subject to state outage-reporting requirements. We believe that there is a legitimate need for the national, uniform outage-

[56] *See supra* note 6.

reporting system that we adopted and which covers various communications platforms. This system is designed to address the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well being of our Nation. Nonetheless, as the Commission, the Department of Homeland Security, and appropriate State authorities gain experience with the outage-reporting system that we are adopting, the Commission and the States may make further refinements in their systems to improve the analytic results that can be gleaned from them and to eliminate any unnecessary duplication. The information collection that we have adopted is necessary to fulfill the Commission's responsibilities for ensuring the reliability and security of the Nation's telecommunications networks and infrastructure, which also serves the public's homeland security needs. We do not find that further accommodations for small businesses could be made that would not be outweighed by the public interest benefits of our present action.

93. We estimate that reporting entities will ordinarily not need more than 15 minutes to file electronically with the Commission the bare-bones Notification that will contain only a minimal amount of data, that is, the name of the Reporting Entity; the Date and Time of onset of the outage; a Brief Description of the Problem; the particular Services Affected; the Geographic Area affected by the outage; and a Contact Name and Contact Number by which the Commission's technical staff may contact the reporting entity. We further estimate that reporting entities will ordinarily not need more than 45 minutes to complete and submit electronically to the Commission the initial report, due within 72 hours of discovery of the outage, that will contain all information then available. Finally, we estimate that reporting entities will ordinarily not need more than 2 hours to complete and submit electronically the final report to the Commission. These time estimates include the actual time needed for data entry and submission but do not include the time taken for data gathering and analysis. Also excluded is idle time (for example, any time in which partially completed information is waiting in an in-box for further review), which we find cannot fairly be counted as a reporting burden. Since most companies routinely collect information on service failures, it is difficult to estimate precisely how much additional time for data gathering and analysis, if any, will be required to comply with the revised rule. In any event, we estimate that for the great majority of outages the total additional time so required will be significantly less than two (2) hours. Thus, the final report will generally not require more than 4 hours in total time. In making all of our time estimates, above, we have taken into account that all filings are to be made electronically, through a ''fill in the blank'' template, thereby minimizing the burden on all reporting entities. In sum, we estimate the total time needed to file all reports pertinent to each outage that meets or exceeds the threshold criteria to be significantly less than 5 hours (the Notification + the Initial Report + Final Report: 15 minutes + 45 minutes + 2 to 4 hours < 5 hours), and most likely little more than 3 hours.

94. Although we anticipate that more than the current amount of 200 outage reports will be filed annually, we estimate that the total number of reports, from all reporting sources combined, will be substantially less than 1,000 annually. Similarly, we anticipate that more than the current number of 17 respondents will file outage reports annually, perhaps an increase of 50%–100%, but we deem it highly unlikely that the number of respondents will increase to more than 52. We note that, occasionally, the outage reporting requirements could require the use of professional skills, including legal and engineering expertise. The commenting parties have not provided any data that would assist us in estimating more accurately estimate the cost of compliance by small telecommunications providers. But irrespective of any of the reporting requirements, we expect that all telecommunications providers (including small ones) will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations—and will do so for service disruptions that are considerably smaller than for disruptions that would trigger the reporting criteria that we propose here. As a consequence, we believe that in the usual case, the only burden associated with the reporting requirements will be the time required to complete the Notification, and the Initial and Final Reports. We anticipate that electronic filing, through the type of illustrative template that we have set forth in Appendix C of the *Report and Order,* should minimize the amount of time and effort that will be required to comply with the rules. In addition, we anticipate that the vast majority of outage reports will by necessitated by outages that meet the general reporting threshold criteria of having a duration of at least 30 minutes and potentially affecting at least 900,000 user-minutes (that is, the mathematical result of multiplying the outage duration expressed in minutes and the number of users potentially affected by the outage meets or exceeds 900,000). We further anticipate that the vast majority of these types of outages will be experienced by large telecommunications providers. Only rarely will providers that are small businesses experience such outages because they are most likely to have a relatively small number of end users that potentially would be affected by any particular outage. Therefore, the outages that are experienced by those providers that are small businesses will most likely fall below the criteria for mandatory reporting and, thus, will not be required to be reported to the Commission. Therefore, such outages will impose minimal reporting burdens on small businesses. Small businesses as a group may experience a few outages yearly that must be reported because those outages meet the reporting criteria for outages potentially affecting 911/E911 services or other special offices and facilities. Large businesses face the same reporting criteria and burden. Because of the critical nature of 911/E911 and other special offices and facilities, it is a national priority that all telecommunications providers, including those that are small businesses, comply with these particular requirements.

95. *E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* In order to minimize any adverse impact of the modified outage-reporting rule on small entities, we have provided for the electronic filing of reports through use of a ''fill in the blank'' template and have adopted a three-step reporting process that is less burdensome than the two-step process originally proposed. We had proposed to require that, 120 minutes after discovering an outage, reporting entities file an Initial Report that would include all information about the outage then available. Instead, we have considered comments that indicate that this proposal could interfere with the ability of reporting entities, especially small businesses, to focus on repair and restorative efforts. Therefore, we have adopted a more flexible requirement, by which reporting entities, 120 minutes after discovering an outage, will file electronically a bare-bones Notification that will contain only a minimal amount

of data, that is, the name of the Reporting Entity; the Date and Time of onset of the outage; a Brief Description of the Problem; the particular Services Affected; the Geographic Area affected by the outage; and a Contact Name and Contact Number by which the Commission's technical staff may contact the reporting entity. The time frame for filing electronically the Initial Report, which is to contain all information then available, has been revised to be 72 hours after the outage's discovery. This is less burdensome to reporting entities because all or most of the diagnostic and restorative work will have typically been completed by this time, and, thus, the reporting requirement will not significantly interfere with such efforts. Moreover, because all or most of the information will already be known, it is unlikely that very much time will be needed to complete either the Initial or the Final Report. The Final Report, as we had proposed, will be due 30 days after discovery of the outage; no commenting party has objected to this time frame.

96. In taking this action, we have considered but reject the Rural ILECs suggestion that, instead of requiring the filing of the Initial Report by the 120-minute mark, we allow small entities to submit outage information orally at the 24-hour mark. The requirements that we adopt will allow all entities 72 hours to file the Initial Report electronically. At the 120-minute mark, we are requiring only that a bare-bones Notification be submitted. We also reject Rural ILECs suggestion that we exempt those small entities to which State outage-reporting requirements apply. We believe that there is a legitimate need for the national, uniform outage-reporting system that we have adopted and which covers various communications platforms. This system is designed to address the critical need for rapid, full, and accurate information on service disruptions that could affect homeland security, public health and safety, as well as the economic well being of our Nation. Nonetheless, as the Commission, the Department of Homeland Security, and appropriate State authorities gain experience with the outage-reporting system that we adopting, the Commission and the States may make further refinements in their systems to improve the analytic results that can be gleaned from them and to eliminate any unnecessary duplication. In any event, we believe that the requirements that we adopt will adequately address the concerns of small entities as well as provide more timely warning of outages and, ultimately, more accurate, complete, and uniform information that will of great use to the Commission, the Department of Homeland Security, and technical expert groups in assessing and improving network reliability and in addressing homeland security concerns.

97. Our action also takes into account comments filed by the BloostonLaw Paging Group, which states our proposed metric of 900,000 user-minutes would place onerous burdens on the paging industry and that almost all paging outages involve only a particular transmitter or a small cluster of transmitters and the provider's entire system. As a result, we adopted rules that are a modified version of our original proposal, which would have required the reporting of all paging outages, even ones that involve only a single transmitter, that meet the threshold. Instead, we have decided to apply the 900,000 user-minute criterion to outages of the switch only. Therefore, we anticipate that very few paging outages will be reportable. The BloostonLaw Paging Group also states that the proposed 120-minute time frame for filing Initial Reports would cause providers to divert resources from restoration efforts and/or to hire additional personnel. We addressed these concerns, above, where we referenced the comments of the Rural ILECs, and have adopted a more flexible, three-step process that adequately addresses and mitigates these concerns and, we find, would not impose a significant financial burden on paging providers. Thus, we reject the suggestions of BloostonLaw Paging Group that we limit the contemporaneous outage-reporting requirements for paging providers to those outages whose origins appear ''suspicious'' and require reports for ''non-suspicious'' outages to be filed semi-annually or less frequently. We do not find that it is always immediately evident whether or not an outage has a ''suspicious'' origin.

98. Finally, we reject the suggestions of BloostonLaw Rural Carriers that, in order to reduce reporting burdens, outage reporting by small (*i.e.*, Tier III) wireless carriers should be on a voluntary basis or an annual or semi-annual basis, with contemporaneous reporting required only for outages of ''suspicious'' origin. We believe that the modifications we have adopted are sufficient to address and mitigate the concerns of small entities while ensuring that the Commission, DHS, and technical expert groups receive the essential information. We also disagree, for reasons explained in the text of the *Report and Order*, with their argument that the concentration ratio of 8 that we have adopted would, for rural wireless providers, result in an overstatement of the number of users potentially affected by an outage.[57]

99. *F. Federal Rules that Might Duplicate, Overlap, or Conflict with the Adopted Rules.* None. We have separately adopted requirements, including information disclosure requirements, concerning aspects of spacecraft operations that may affect the ability of operators to complete appropriate satellite end-of-life procedures. *See In the Matter of Mitigation of Orbital Debris*, IB Docket No. 02–54, *Second Report and Order*, FCC 04–130, released June 21, 2004. Also, part 25 of the Commission's Rules provides that certain satellite licensees file annual reports that contain some information on outages and that Mobile-Satellite Service (MSS) Ancillary Terrestrial Component (ATC) licensees report certain outages within 10 days of their occurrence. These rules were adopted to provide the Commission with information necessary to assess the commercial and technical development of satellite services, including the efficiency of spectrum utilization by satellite licensees, and, in the case of MSS ATC licensees, to ensure that the terrestrial use of spectrum remains ancillary to satellite use. In the *Notice of Proposed Rulemaking*, we tentatively concluded that our proposed additional reporting requirements were necessary so that we can more rapidly acquire information that would be more useful in achieving our objectives of increasing reliability and security in satellite communications. We sought comment on these proposals and on alternative ways to accomplish our objectives in this proceeding while minimizing any duplication of reporting requirements or unnecessary burdens on satellite communications providers. The record in this proceeding does not show that the rules adopted in the *Report and Order* substantially duplicate the adopted rules. To the contrary, we find that the adopted rules are needed to fulfill the Commission's responsibilities with respect to public safety, national security and to assist the Department of Homeland Security with regard to the nation's telecommunications infrastructure within the homeland security context.

Ordering Clauses

100. Pursuant to the authority contained in Sections 1, 4(i)–(j), 4(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403,

[57] *See Report and Order, supra*, at ¶ 107–113.

621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 154(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d), and in Section 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 3504, that the *Report and Order* and Further Notice of Proposed Rule Making *is adopted,* and parts 0, 4, and 63 of the Commission's Rules *are amended* as specified in the rule changes, effective January 3, 2005, except for part 4 and the amendments to § 63.100, which contains information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the modified information collection requirements must be submitted on or before January 3, 2005.

101. The motion for acceptance of late-filed comments filed by the Department of Homeland Security on June 2, 2004, and the motions for acceptance of late-filed reply comments filed by the Department of Homeland Security and CCS Partners, LLC on June 29 and July 6, 2004, respectively, ARE GRANTED for good cause shown.

102. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Report and Order* and Further Notice of Proposed Rule Making, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies), Reporting and record-keeping requirements.

47 CFR Part 4

Airports, Communications common carriers, Communications equipment, Disruptions to Communications, Network Outages, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends parts 0 and 63 and adds part 4 of chapter I of title 47 of the CFR as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 255, unless otherwise noted.

■ 2. Section 0.31 is amended by revising paragraph (i) to read as follows:

§ 0.31 Functions of the Office.

* * * * *

(i) To administer parts 2, 4, 5, 15, and 18 of this chapter, including licensing, recordkeeping, rule making, and revising the filing system and template used for compliance with the Commission's communications disruption reporting requirements.

* * * * *

■ 3. Section 0.241 is amended by revising paragraph (a) introductory text and paragraphs (a)(1) and (b) through (g) and by adding paragraphs (h) and (i) to read as follows:

§ 0.241 Authority delegated.

(a) The performance of functions and activities described in § 0.31 is delegated to the Chief of the Office of Engineering and Technology: *Provided,* that the following matters shall be referred to the Commission en banc for disposition:

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes, except that the Chief of the Office of Engineering and Technology is delegated authority to make the revisions to the filing system and template necessary to improve the efficiency of reporting and to reduce, where reasonably possible, the time for providers to prepare, and for the Commission staff to review, the communications disruption reports required to be filed pursuant to part 4 of this chapter.

* * * * *

(b) The Chief of the Office of Engineering and Technology is delegated authority to administer the Equipment Authorization program as described in part 2 of this chapter.

(c) The Chief of the Office of Engineering and Technology is delegated authority to administer the Experimental Radio licensing program pursuant to part 5 of this chapter.

(d) The Chief of the Office of Engineering and Technology is delegated authority to administer the communications disruption reporting requirements that are contained in part 4 of this chapter and to revise the filing system and template used for the submission of such reports.

(e) The Chief of the Office of Engineering and Technology is delegated authority to examine all applications for certification (approval) of subscription television technical systems as acceptable for use under a subscription television authorization as provided for in this chapter, to notify the applicant that an examination of the certified technical information and data submitted in accordance with the provisions of this chapter indicates that the system does or does not appear to be acceptable for authorization as a subscription television system. This delegation shall be exercised in consultation with the Chief, Media Bureau.

(f) The Chief of the Office of Engineering and Technology is authorized to dismiss or deny petitions for rulemaking which are repetitive or moot or which for other reasons plainly do not warrant consideration by the Commission.

(g) The Chief of the Office of Engineering and Technology is authorized to enter into agreements with the National Institute of Standards and Technology and other accreditation bodies to perform accreditation of test laboratories pursuant to § 2.948(d) of this chapter. In addition, the Chief is authorized to make determinations regarding the continued acceptability of individual accrediting organizations and accredited laboratories.

(h) The Chief of the Office of Engineering and Technology is delegated authority to enter into agreements with the National Institute of Standards and Technology to perform accreditation of Telecommunication Certification Bodies (TCBs) pursuant to §§ 2.960 and 2.962 of this chapter. In addition, the Chief is delegated authority to develop specific methods that will be used to accredit TCBs, to designate TCBs, to make determinations regarding the continued acceptability of individual TCBs, and to develop procedures that TCBs will use for performing post-market surveillance.

(i) The Chief of the Office of Engineering and Technology is delegated authority to make

nonsubstantive, editorial revisions to the Commission's rules and regulations contained in parts 2, 4, 5, 15, and 18 of this chapter.

■ 4. Part 4 is added to read as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

General

Sec.
4.1 Scope, basis and purpose.
4.2 Availability of reports filed under this part.

Reporting Requirements for Disruptions to Communications

4.3 Communications providers covered by the requirements of this part.
4.5 Definitions of outage, special offices and facilities, and 911 special facilities.
4.7 Definitions of metrics used to determine the general outage-reporting threshold criteria.
4.9 Outage reporting requirements—threshold criteria.
4.11 Notification and initial and final communications outage reports that must be filed by communications providers.
4.13 Reports by the National Communications System (NCS) and by special offices and facilities, and related responsibilities of communications providers.

Authority: 47 U.S.C. 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d), unless otherwise noted.

General

§ 4.1 Scope, basis and purpose.

In this part, the Federal Communications Commission is setting forth requirements pertinent to the reporting of disruptions to communications and to the reliability and security of communications infrastructures.

§ 4.2 Availability of reports filed under this part.

Reports filed under this part will be presumed to be confidential. Public access to reports filed under this part may be sought only pursuant to the procedures set forth in 47 CFR § 0.461. Notice of any requests for inspection of outage reports will be provided pursuant to 47 CFR 0.461(d)(3).

Reporting Requirements for Disruptions to Communications

§ 4.3 Communications providers covered by the requirements of this part.

(a) *Cable communications providers* are cable service providers that also provide circuit-switched telephony. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering telephony.

(b) *Communications provider* is an entity that provides for a fee to one or more unaffiliated entities, by radio, wire, cable, satellite, and/or lightguide: two-way voice and/or data communications, paging service, and/or SS7 communications.

(c) *IXC or LEC tandem facilities* refer to tandem switches (or their equivalents) and interoffice facilities used in the provision of interexchange or local exchange communications.

(d) *Satellite communications providers* use space stations as a means of providing the public with communications, such as telephony and paging. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications. ''Satellite operators'' refer to entities that operate space stations but do not necessarily provide communications services directly to end users.

(e) *Signaling System 7 (SS7)* is a signaling system used to control telecommunications networks. It is frequently used to ''set up,'' process, control, and terminate circuit-switched telecommunications, including but not limited to domestic and international telephone calls (irrespective of whether the call is wholly or in part wireless, wireline, local, long distance, or is carried over cable or satellite infrastructure), SMS text messaging services, 8XX number type services, local number portability, VoIP signaling gateway services, 555 number type services, and most paging services. For purposes of this rule part, SS7 refers to both the SS7 protocol and the packet networks through which signaling information is transported and switched or routed. It includes future modifications to the existing SS7 architecture that will provide the functional equivalency of the SS7 services and network elements that exist as of August 4, 2004. SS7 communications providers are subject to the provisions of this part 4 regardless of whether or not they provide service directly to end users. Also subject to part 4 of the Commission's rules are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the SS7 provider in offering SS7 communications.

(f) *Wireless service providers* include Commercial Mobile Radio Service communications providers that use cellular architecture and CMRS paging providers. In particular, they include Cellular Radio Telephone Service (part 22 of the Commission's Rules) providers; Personal Communications Service (PCS) (part 24) providers; those Special Mobile Radio Service (part 90) providers that meet the definition of ''covered CMRS'' providers pursuant to §§ 20.18(a), 52.21, and 52.31 of the Commission's rules, those private paging (part 90) providers that are treated as CMRS providers (*see* § 20.9 of this chapter); and narrowband PCS providers (part 24) of this chapter. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.

(g) *Wireline communications providers* offer terrestrial communications through direct connectivity, predominantly by wire, coaxial cable, or optical fiber, between the serving central office (as defined in the appendix to part 36 of this chapter) and end user location(s). Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.

(h) *Exclusion of equipment manufacturers or vendors.* Excluded from the requirements of this part 4 are those equipment manufacturers or vendors that do not maintain or provide communications networks or services used by communications providers in offering communications.

§ 4.5 Definitions of outage, special offices and facilities, and 911 special facilities.

(a) *Outage* is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.

(b) *Special offices and facilities* are defined as major military installations, key government facilities, nuclear power plants, and those airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airports Systems (NPIAS) (as issued at least one calendar year prior to the outage). The member agencies of the National Communications System (NCS) will determine which of their locations are ''major military installations'' and ''key government facilities.'' 911 special facilities are addressed separately in paragraph (e) of this section.

(c) All outages that potentially affect communications for at least 30 minutes with any airport that qualifies as a ''special office and facility'' pursuant to the preceding paragraph shall be

reported in accordance with the provisions of §§ 4.11 and 4.13.

(d) A mission-affecting outage is defined as an outage that is deemed critical to national security/emergency preparedness (NS/EP) operations of the affected facility by the National Communications System member agency operating the affected facility.

(e) An outage that potentially affects a 911 special facility occurs whenever:

(1) There is a loss of communications to PSAP(s) potentially affecting at least 900,000 user-minutes and: The failure is neither at the PSAP(s) nor on the premises of the PSAP(s); no reroute for all end users was available; and the outage lasts 30 minutes or more; or

(2) There is a loss of 911 call processing capabilities in one or more E–911 tandems/selective routers for at least 30 minutes duration; or

(3) One or more end-office or MSC switches or host/remote clusters is isolated from 911 service for at least 30 minutes and potentially affects at least 900,000 user-minutes; or

(4) There is a loss of ANI/ALI (associated name and location information) and/or a failure of location determination equipment, including Phase II equipment, for at least 30 minutes and potentially affecting at least 900,000 user-minutes (provided that the ANI/ALI or location determination equipment was then currently deployed and in use, and the failure is neither at the PSAP(s) or on the premises of the PSAP(s)).

§ 4.7 Definitions of metrics used to determine the general outage-reporting threshold criteria.

(a) *Administrative numbers* are defined as the telephone numbers used by communications providers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.

(b) *Assigned numbers* are defined as the telephone numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use. This excludes numbers that are not yet working but have a service order pending.

(c) *Assigned telephone number* minutes are defined as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the sum of the number of assigned numbers (defined in paragraph (b) of this section) potentially affected by the outage and the number of administrative numbers (defined in paragraph (a) of this section) potentially affected by the outage. ''Assigned telephone number minutes'' can alternatively be calculated as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of working telephone numbers potentially affected by the outage, where working telephone numbers are defined as the telephone numbers, including DID numbers, working immediately prior to the outage.

(d) *DS3 minutes* are defined as the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of previously operating DS3 circuits that were affected by the outage.

(e) *User minutes* are defined as:

(1) Assigned telephone number minutes (as defined in paragraph (c) of this section), for telephony and for those paging networks in which each individual user is assigned a telephone number;

(2) The mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage, for all other forms of communications.

(f) *Working telephone numbers* are defined to be the sum of all telephone numbers that can originate, or terminate telecommunications. This includes, for example, all working telephone numbers on the customer's side of a PBX, or Centrex, or similar arrangement.

§ 4.9 Outage reporting requirements—threshold criteria.

(a) *Cable.* All cable communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that:

(1) Potentially affects at least 900,000 user minutes of telephony service;

(2) Affects at least 1,350 DS3 minutes;

(3) Potentially affects any special offices and facilities (in accordance with paragraphs (a) through (d) of § 4.5); or

(4) Potentially affects a 911 special facility (as defined in paragraph (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of § 4.7.) Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

(b) *IXC or LEC tandem facilities.* In the case of IXC or LEC tandem facilities, providers must, if technically possible, use real-time blocked calls to determine whether criteria for reporting an outage have been reached. Providers must report IXC and LEC tandem outages of at least 30 minutes duration in which at least 90,000 calls are blocked or at least 1,350 DS3-minutes are lost. For interoffice facilities which handle traffic in both directions and for which blocked call information is available in one direction only, the total number of blocked calls shall be estimated as twice the number of blocked calls determined for the available direction. Providers may use historic carried call load data for the same day(s) of the week and the same time(s) of day as the outage, and for a time interval not older than 90 days preceding the onset of the outage, to estimate blocked calls whenever it is not possible to obtain real-time blocked call counts. When using historic data, providers must report incidents where at least 30,000 calls would have been carried during a time interval with the same duration of the outage. (DS3 minutes are defined in paragraph (d) of § 4.7.) In situations where, for whatever reason, real-time and historic carried call load data are unavailable to the provider, even after a detailed investigation, the provider must determine the carried call load based on data obtained in the time interval between the onset of the outage and the due date for the final report; this data must cover the same day of the week, the same time of day, and the same duration as the outage. Justification that such data accurately estimates the traffic that would have been carried at the time of the outage had the outage not occurred must be available on request. If carried call load data cannot be obtained through any of the methods described, for whatever reason, then the provider shall report the outage.

(c) *Satellite.* (1) All satellite operators shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise

utilize, of an outage of at least 30 minutes duration that manifests itself as a failure of any of the following key system elements: One or more satellite transponders, satellite beams, inter-satellite links, or entire satellites. In addition, all Mobile-Satellite Service (''MSS'') satellite operators shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, of an outage of at least 30 minutes duration that manifests itself as a failure of any gateway earth station, except in the case where other earth stations at the gateway location are used to continue gateway operations within 30 minutes of the onset of the failure.

(2) All satellite communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that manifests itself as:

(i) A loss of complete accessibility to at least one satellite or transponder;

(ii) A loss of a satellite communications link that potentially affects at least 900,000 user-minutes (as defined in § 4.7(d)) of either telephony service or paging service;

(iii) Potentially affecting any special offices and facilities (in accordance with paragraphs (a) through (d) of § 4.5) other than airports; or

(iv) Potentially affecting a 911 special facility (as defined in (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility.

(3) Not later than 72 hours after discovering the outage, the operator and/or provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the operator and/or provider shall submit electronically a Final Communications Outage Report to the Commission.

(4) The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

(5) Excluded from these outage-reporting requirements are those satellites, satellite beams, inter-satellite links, MSS gateway earth stations, satellite networks, and transponders that are used exclusively for intra-corporate or intra-organizational private telecommunications networks, for the one-way distribution of video or audio programming, or for other non-covered services (that is, when they are never used to carry common carrier voice or paging communications).

(d) *Signaling system 7.* Signaling System 7 (SS7) providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize an outage of at least 30 minutes duration that is manifested as the generation of at least 90,000 blocked calls based on real-time traffic data or at least 30,000 lost calls based on historic carried loads. In cases where a third-party SS7 provider cannot directly estimate the number of blocked calls, the third-party SS7 provider shall use 500,000 real-time lost MTP messages as a surrogate for 90,000 real-time blocked calls, or 167,000 lost MTP messages on a historical basis as a surrogate for 30,000 lost calls based on historic carried loads. Historic carried load data or the number of lost MTP messages on a historical basis shall be for the same day(s) of the week and the same time(s) of day as the outage, and for a time interval not older than 90 days preceding the onset of the outage. In situations where, for whatever reason, real-time and historic data are unavailable to the provider, even after a detailed investigation, the provider must determine the carried load based on data obtained in the time interval between the onset of the outage and the due date for the final report; this data must cover the same day of the week and the same time of day as the outage. If this cannot be done, for whatever reason, the outage must be reported. Justification that such data accurately estimates the traffic that would have been carried at the time of the outage had the outage not occurred must be available on request. Finally, whenever a pair of STPs serving any communications provider becomes isolated from a pair of interconnected STPs that serve any other communications provider, for at least 30 minutes duration, each of these communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering such outage. Not later than 72 hours after discovering the outage, the provider(s) shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider(s) shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

(e) *Wireless.* All wireless service providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration:

(1) Of a Mobile Switching Center (MSC);

(2) That potentially affects at least 900,000 user minutes of either telephony and associated data (2nd generation or lower) service or paging service;

(3) That affects at least 1,350 DS3 minutes;

(4) That potentially affects any special offices and facilities (in accordance with paragraphs (a) through (d) of § 4.5) other than airports through direct service facility agreements; or

(5) That potentially affects a 911 special facility (as defined in (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility. (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of § 4.7.) In determining the number of users potentially affected by a failure of a switch, a concentration ratio of 8 shall be applied. For providers of paging service solely, however, the following outage criteria shall apply instead of those in paragraphs (b)(1) through (b)(3) of this section. Notification must be submitted if the failure of a switch for at least 30 minutes duration potentially affects at least 900,000 user-minutes. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

(f) *Wireline.* All wireline communications providers shall submit electronically a Notification to the Commission within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that:

(1) Potentially affects at least 900,000 user minutes of either telephony or paging;

(2) Affects at least 1,350 DS3 minutes;

(3) Potentially affects any special offices and facilities (in accordance with paragraphs (a) through (d) of § 4.5); or

(4) Potentially affects a 911 special facility (as defined in paragraph (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and the provider shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility. (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of § 4.7.) Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

§ 4.11 Notification and initial and final communications outage reports that must be filed by communications providers.

Notification and Initial and Final Communications Outage Reports shall be submitted by a person authorized by the communications provider to submit such reports to the Commission. The person submitting the Final report to the Commission shall also be authorized by the provider to legally bind the provider to the truth, completeness, and accuracy of the information contained in the report. Each Final report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief and that the communications provider on oath deposes and states that this information is true, complete, and accurate. The Notification shall provide: the name of the reporting entity; the date and time of onset of the outage; a brief description of the problem; service affects; the geographic area affected by the outage; and a contact name and contact telephone number by which the Commission's technical staff may contact the reporting entity. The Initial and Final Reports shall contain the information required in this part 4. The Initial report shall contain all pertinent information then available on the outage and shall be submitted in good faith. The Final report shall contain all pertinent information on the outage, including any information that was not contained in, or that has changed from that provided in, the Initial report. The Notification and the Initial and Final Communications Outage Reports are to be submitted electronically to the Commission.

''Submitted electronically'' refers to submission of the information using Commission-approved Web-based outage report templates. If there are technical impediments to using the Web-based system during the Notification stage, then a written Notification to the Commission by email, FAX, or courier may be used; such Notification shall contain the information required. All hand-deliverd Notifications and Initial and Final Communications Outage Reports, shall be addressed to the Federal Communications Commission, The Office of Secretary, Attention: Edmond J. Thomas, Chief, Office of Engineering & Technology, 236 Massachusetts Ave., NE., Suite 110, Washington, DC 20002. Electronic filing shall be effectuated in accordance with procedures that are specified by the Commission by public notice.

§ 4.13 Reports by the National Communications System (NCS) and by special offices and facilities, and related responsibilities of communications providers.

Reports by the National Communications System (NCS) and by special offices and facilities (other than 911 special offices and facilities) of outages potentially affecting them (see paragraphs (a) through (d) of § 4.5) shall be made according to the following procedures:

(a) When there is a mission-affecting outage, the affected facility will report the outage to the NCS and call the communications provider in order to determine if the outage is expected to last 30 minutes. If the outage is not expected to, and does not, last 30 minutes, it will not be reported to the Commission. If it is expected to last 30 minutes or does last 30 minutes, the NCS, on the advice of the affected special facility and in the exercise of its judgment, will either:

(1) Forward a report of the outage to the Commission, supplying the information for initial reports affecting special facilities specified in this section of the Commission's Rules;

(2) Forward a report of the outage to the Commission, designating the outage as one affecting ''special facilities,'' but reporting it at a level of detail that precludes identification of the particular facility involved; or

(3) Hold the report at the NCS due to the critical nature of the application.

(b) If there is to be a report to the Commission, an electronic, written, or oral report will be given by the NCS within 120 minutes of an outage to the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served at such other facility designated by the Commission by public notice or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. If the report is oral, it is to be followed by an electronic or written report not later than the next business day. Those providers whose service failures are in any way responsible for the outage must consult and cooperate in good faith with NCS upon its request for information.

(c) Additionally, if there is to be a report to the Commission, the communications provider will provide a written report to the NCS, supplying the information for final reports for special facilities required by this section of the Commission's rules. The communications provider's final report to the NCS will be filed within 28 days after the outage, allowing the NCS to then file the report with the Commission within 30 days after the outage. If the outage is reportable as described in paragraph (b) of this section, and the NCS determines that the final report can be presented to the Commission without jeopardizing matters of national security or emergency preparedness, the NCS will forward the report as provided in either paragraphs (a)(1) or (a)(2) of this section to the Commission.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

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

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 6. Section 63.100 is revised to read as follows:

§ 63.100 Notification of service outage.

The requirements for communications providers concerning communications disruptions and the filing of outage reports are set forth in part 4 of this chapter.

[FR Doc. 04–26167 Filed 12–2–04; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 206

Home Equity Conversion Mortgages: Long Term Care Insurance; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–4857–A–01; HUD–2004–0016]

RIN 2502–AI04

Home Equity Conversion Mortgages: Long Term Care Insurance; Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This notice requests comments on issues related to the implementation of a statute that allows for the waiver of the collection of a home equity conversion mortgage (HECM) mortgagor's single up-front mortgage premium. The statute allows for the waiver provided that the HECM future payments to the homeowner are used to pay the premiums for a qualified long term care insurance contract.

DATES: *Comment Due Date:* February 1, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *www.regulations.gov;* or
- The HUD electronic Web site at: *www.epa.gov/feddocket*. Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *www.epa.gov/feddocket*.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Office of Single Family Housing, Department of Housing and Urban Development. Room 9278, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 201 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569, approved December 27, 2000) (AHEO Act) amended section 255 of the National Housing Act (12 U.S.C. 1715z–20) to add a new subsection (l) to provide for the waiver of up-front premiums for HECM mortgages used to fund long-term care insurance. Section 255 is the statutory authority for the creation of the HECM program. Under section 255, the Secretary is authorized to ''carry out a program of mortgage insurance designed to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing, and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets.''

HUD regulations at 24 CFR part 206 govern the HECM program. Currently, a HECM mortgagor is required to pay to the mortgagee an initial or up-front mortgage insurance premium that is two percent of the maximum claim amount in addition to a monthly premium thereafter (see 24 CFR 206.105). The amendment by section 201 of the AHEO Act authorizes the Secretary to waive the two percent premium, provided that the HECM proceeds received by the mortgagor are applied to payment of the premiums for a ''qualified long-term care insurance contract that covers the mortgagor or members of the household residing in the property that is subject to the mortgage.'' The mortgagor would continue to be required to pay the monthly MIP prescribed in the regulations.

In accordance with new section 255(l)(3) of the National Housing Act, the term ''qualified long-term care insurance contract'' has the meaning given such term in section 7702B of the Internal Revenue Code of 1986 (26 U.S.C. 7702B), except that such contract also shall meet the requirements certain sections of the long-term care insurance model regulation promulgated by the National Association of Insurance Commissioners (NAIC), adopted as of September 2000. The applicable sections of the model regulation are: Section 9, Required Disclosure of Rating Practices to Consumer; Section 24, Suitability; and Section 26, Nonforfeiture Benefit Requirement. Additionally, the qualified long-term care insurance contract must meet the requirements of Section 8, Nonforfeiture Benefits of the Long-Term Care Insurance Model Act (model act) promulgated by the NAIC, adopted as of September, 2000.

The terms ''disclosure,'' ''suitability,'' and ''contingent nonforfeiture'' are technical terms addressed in the NAIC model regulation and model act, and in long-term care policies. For purposes of discussion in this notice, however, it is sufficient to describe these terms as follows:

''Disclosure'' in the model regulation pertains specifically to a long-term care policy that has the possibility of experiencing an increase in the amount of the premium rate. Thus, an insurer or agent of the long-term care insurance (LTCI) contract is required to provide a statement to an applicant indicating the possibility of a future premium rate increase, including information about any premium increases that have occurred over the past ten years.

''Suitability'' addresses the suitability of long-term care insurance for a prospective purchaser of a policy (*e.g.*, taking into account such factors as the person's age, health, assets, income, etc.). Various worksheets and disclosure forms are required to assist an applicant to understand better the nature and suitability of a LTCI policy. While the decision to purchase insurance ultimately rests with the applicant, the insurance carrier must offer guidance to the purchaser concerning suitability, as described here, before the decision is made.

The ''contingent nonforfeiture'' benefit is more readily understood by reference to the nature of a ''nonforfeiture'' benefit. Typically, an applicant will receive the option to pay an increased premium rate for ''nonforfeiture'' coverage. In exchange for what is, relatively speaking, a very expensive premium rate, the applicant can receive a substantial benefit, such as the return of all premiums paid, if the policy is surrendered after a requisite period of time. NAIC defines the nonforfeiture benefit as a policy feature that returns at least a part of the premiums to a policyholder if he or she cancels the policy or allows it to lapse. However, if an applicant chooses not to purchase the nonforfeiture option, under the NAIC model act and regulation, the contingent nonforfeiture benefit must become effective automatically. In essence, the nonforfeiture benefit recognizes the possibility of a huge and unanticipated increase in a premium schedule that could force a policyholder to surrender

his or her policy. In such a case, the NAIC model Act and regulation are designed to assure that the policyholder receives some reimbursement for premiums already paid, albeit a much lesser amount than that which the policyholder would have received if he or she had purchased the nonforfeiture benefit.

Issues for Consideration

1. Who Is Covered by an LTCI Contract?

An initial question stems from language in the statutory amendment to section 255 that pertains to who can be covered by a LTCI contract. The statute refers to a LTCI contract that covers ''*the mortgagor or members of the household residing in the property that is subject to the mortgage*'' (emphasis added). This language is very broad, in that it invites the possibility of any person, irrespective of relationship to the mortgagor, being covered by the long term care policy, provided that the person is a ''member of the mortgagor's household'' and ''residing in the property subject to the mortgage.'' Accordingly, should HUD limit this eligibility requirement so that being a member of the mortgagor's household means having a particular relationship to the mortgagor (*e.g.*, a spouse or child)? For practical and programmatic reasons, HUD is inclined to limit the eligible ''member of the mortgagor's household'' to a person who is part of the mortgagor's immediate family.

A further question is, should a non-mortgagor member of the household be required to remain in the household for at least a specified minimum amount of time in order to maintain eligibility? Conversely, should the HECM loan be used to pay for long term care premiums for a non-mortgagor member of the household even after he or she has ceased to reside in the property securing the HECM loan? Additionally, should HUD regulate the amount of time that a mortgagor, or other member of the household, covered by the LTCI policy can receive care outside the home before the HECM becomes due and payable? HUD is interested in receiving comments on these and related questions before it proposes any standards.

2. What Are the Required Features or Options of an LTCI Contract?

A second issue arises from the fact that the benefits offered in long-term care policies are not standardized. Benefits offered under a policy will vary depending upon a purchaser's discretion and the amount of the premium payments that he or she is willing and able to make. For the very reason that premiums rise in accordance with enhanced benefits, HUD is reluctant to impose additional requirements upon a policyholder's choices when he or she is selecting a benefit package. Notably, the statutory requirements described above, applicable to a ''qualified long-term care insurance policy'' (*i.e.*, disclosure, suitability, and contingent nonforfeiture), help to protect the consumer but come at a cost (*i.e.*, an increased premium for the enhanced protection required). There are certain consumer protection features or options that HUD is considering requiring in a qualified LTCI policy, even though these options result in increased premiums. For example, HUD is considering including a requirement for ''comprehensive coverage,'' recognizing that a policyholder will pay a greater premium amount for this coverage (that allows for care in one's own home, a nursing home, an assisted living facility and/or an adult day-care facility) as opposed to coverage that limits care to a particular kind of facility (*i.e.*, ''facility-based'' care, such as care provided in a nursing home).

HUD is also considering requiring ''portability,'' a feature that ensures the policyholder will receive the benefits of a policy regardless of whether that (non-mortgagor) policyholder moves to another jurisdiction that has different requirements from the one in which the policy originally was issued.

Other requirements could include optional features that impose (1) a minimum benefit amount of daily dollar coverage (*e.g.*, at least one hundred dollars per day); (2) a minimum care term under the policy (*e.g.*, at least five years, as opposed to three years or some other minimum term); or (3) an inflation factor, *e.g.*, that the daily amount of benefit coverage increases annually by five (or some other) percent; or all of these requirements.

HUD is interested in public comment on what options, if any, should be required under the program, given that increased options may offer greater protections for the consumer, but also may result in increased premiums that can affect the actuarial soundness of the HECM program.

HUD is also interested in comments on the relationship between potential requirements and existing requirements under federal and state regulation of long-term care insurance. Specifically, HUD would like comments that explore if existing requirements are sufficient to protect the consumer and if imposing new requirements would limit the availability of insurance to be used under this program.

3. What Standards Should Govern an Insurer of an LTCI Contract?

A related consumer protection issue concerns the viability of the carrier that is offering long-term care insurance. How can HUD be certain that the insurer is a qualitatively sound entity? What minimum standards, if any, should HUD impose regarding the qualifications of the carrier?

HUD welcomes comments suggesting possible additional safeguards.

4. What Requirements Should Govern the Lender?

Another area of interest pertains to the responsibility of HUD and/or the mortgage lender for making sure that the LTCI policy meets the requirements in the statute (*i.e.*, provisions of the model act and model regulation promulgated by the NAIC) as well as any requirements that may be imposed by HUD. What requirements should HUD reasonably impose upon the mortgagee in this area? Should the mortgage lender be responsible for making premium payments directly to the long-term care insurer on behalf of the HECM mortgagor, given that the statutory amendment requires the entire HECM benefit be applied to the LTCI policy premium (other than amounts used to satisfy outstanding mortgage obligations ''in accordance with such limitations as the Secretary shall prescribe'' and to pay various fees described in the statutory amendment)?

5. How Should HECM Proceeds Be Addressed To Ensure Sufficient Funds Remain for LTCI?

The use of the HECM proceeds gives rise to additional questions. First, how can HUD best comply with the statutory amendment that imposes limits on the amount that can be used to retire outstanding mortgage obligations, thereby assuring that adequate funds remain available to fund long-term care insurance? Is it practical or even possible for HUD to devise a standard, by formula or otherwise, to determine an appropriate amount?

Second, once any outstanding debt and other permissible fees are paid off by the HECM proceeds, the statute requires all remaining payments be applied to the LTCI policy premiums. Thus, under this particular program, and unlike the existing HECM program, the mortgagor will not have access to any HECM proceeds for discretionary spending purposes. Will this requirement in the statutory amendment

affect consumer interest in the HECM/long term care program?

6. How Should the Program Handle Defaults?

Another area of concern upon which HUD seeks comment pertains to default events and consequences. HUD proposes to make the HECM loan due and payable upon a mortgagor's voluntary termination of the LTCI policy. However, it is conceivable that a policy could lapse through no fault of the HECM mortgagor. For example, the termination of the policy may reflect an unanticipated or inappropriate action on behalf of the LTCI carrier. In such an event, HUD is considering that the HECM loan should be deemed due and payable unless, within 90 days of the date that (1) the HECM mortgagor purchases a new LTCI policy or (2) reimburses the Department an amount equal to the two-percent upfront mortgage insurance premium that was waived at the time that the HECM was issued. There is also the question of the source of the funds for the new policy if it would cost more than the undisbursed mortgage proceeds.

7. What Is the Likely Demand for This Program?

As this would be a new program, HUD is interested in comments that discuss or estimate (or both) the likely volume of potential consumer demand for these loans. HUD is also interested in comments on factors that could positively or negatively influence demand for this new product.

General Solicitation of Comments

HUD seeks comments on how the issues described in this notice should be addressed. HUD also invites commenters to raise any other areas that should be addressed in implementing a HECM LTCI policy and to provide suggestions on how these additional areas should be addressed.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this advance notice of proposed rulemaking (ANPR) under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. Any changes made in this ANPR subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Dated: November 5, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–26591 Filed 12–2–04; 8:45 am]

BILLING CODE 4210–27–U

Federal Register

Friday,
December 3, 2004

Part IV

The President

Memorandum of October 21, 2004—Designation and Authorization To Perform Functions Under Section 319F–2 of the Public Health Service Act

Federal Register
Vol. 69, No. 232
Friday, December 3, 2004

Presidential Documents

Title 3—

The President

Memorandum of October 21, 2004

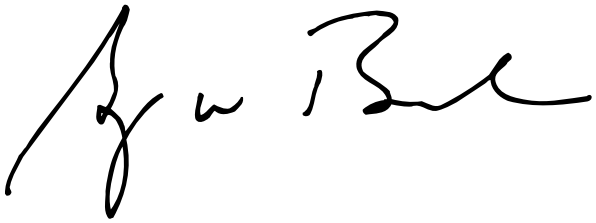
Designation and Authorization to Perform Functions Under Section 319F–2 of the Public Health Service Act

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby direct you to perform the functions vested in the President under section 319F–2(c)(6) of the Public Health Service Act, 42 U.S.C. 247d–6b(c)(6).

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the **Federal Register**.



[FR Doc. 04–26787
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