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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 762, 764, and 774

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1910, 1924, 1941, 1943, 1951, 1955, 1956, 1962, and 1965

RIN 0560–AG78

2002 Farm Bill Regulations—General Credit Provisions

AGENCY: Farm Service Agency and Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Farm Service Agency's (FSA) regulations to comply with provisions of the Farm Security and Rural Investment Act of 2002 (2002 Act). In addition, this rule clarifies direct loan eligibility criteria in accordance with the Department of Agriculture Reorganization Act of 1994. This rule amends the regulations that govern the direct and guaranteed farm loan programs of FSA by revising eligible loan purposes, percentage of loan guarantees, terms for downpayment loans, the direct loan ''term limit'' and numerous other provisions affecting loan making, servicing and collections. The rule is intended to focus more FSA resources on beginning farmers and ranchers and make more borrowers eligible for FSA farm credit assistance.

DATES: Effective February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Zeidler, Senior Loan Officer, USDA, FSA, Farm Loan Programs Loan Making Division, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–5199; e-mail: *kathy_zeidler@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

This rule is not being published for public notice or to solicit comment from interested parties as a proposed rule because it implements precise requirements of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171)(the 2002 Act) where the Agency has little or no leeway in terms of policy interpretation. Thus, this rule is published as final and is effective immediately. Other provisions of the 2002 Act that involve agency policy considerations in which public participation is required will be published separately according to 5 U.S.C. 553.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, Public Law 96–534, (5 U.S.C. 601), FSA has determined that this rule will not have a significant economic impact on a substantial number of small entities. FSA program participants are predominantly family-size farmers and ranchers and, as defined by the U.S. Small Business Administration, approximately 98 percent of all farmers are classified as small businesses. The provisions in this rule will not impact a substantial number of small entities to a greater extent than large entities. The intent of this rule is to implement legislation. Program participation is voluntary and requires no direct action on the part of small entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Evaluation

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent any laws are inconsistent with it, and its provisions are not retroactive. Before legal action may be brought concerning this rule, administrative remedies must be exhausted.

Executive Order 12372

The programs within this rule are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. The rule contains no Federal mandates, as defined by title II of the UMRA. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2) and, therefore, is not subject to the requirements of the SBREFA.

Paperwork Reduction Act

The Agency's information collection requirements, currently approved under OMB control numbers 0560–0154, 0560–0157, 0560–0162, 0560–0166, 0560–0167, 0560–0171, and 0560–0178 are not affected by the final rule.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are:

10.404—Emergency Loans

10.406—Farm Operating Loans

10.407—Farm Ownership Loans

Discussion of the Final Rule

This rule implements the general credit provisions of title V of the 2002 Act as they apply to FSA's Farm Loan Programs (FLP). The changes to Federal credit policies are relatively minor. The changes focus more FSA resources on beginning farmers and ranchers and make slightly more applicants eligible for FSA farm credit assistance. The effects of the changes are difficult to estimate, but they are expected to boost demand minimally for FSA farm loan programs. The specific regulatory changes are discussed below.

Refinancing Bridge Loans

Section 5002 of the 2002 Act authorizes FSA to refinance a temporary bridge loan that was obtained from a commercial or cooperative lender because a shortage of loan funds prevented FSA from closing an approved direct farm ownership (FO) loan. This rule amends 7 CFR 1943.16 to implement this section.

Amount of Guarantee for Operations on Tribal Land

Section 5003 of the 2002 Act expands the category of loans eligible for a 95 (instead of 90) percent guarantee to include operating loans (OL) made to a farmer or rancher whose land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe. This rule amends FSA's guaranteed loan eligibility requirements at 7 CFR 762.129 accordingly.

Term and Loan Percentage Changes for Downpayment Loan Program

Section 5005 of the 2002 Act modifies the terms for loans made under the Downpayment FO Loan Program for qualified beginning farmers and ranchers. Accordingly, this rule amends 7 CFR 1943.14 to specify that loans made under this program will be for 40 (instead of 30) percent of the purchase price or appraised value of the farm or ranch, whichever is less. The term of the loan is limited to 15 (instead of 10) years or less. Also, the time period in which balloon installments are prohibited on loans obtained from other lenders in conjunction with a Downpayment FO loan is increased to 15 (instead of 10) years.

Term Limits on Direct Operating Loans

Section 5101 of the 2002 Act requires the Agency to waive the term limit for a direct OL to a farmer or rancher when their land is subject to the jurisdiction of an Indian tribe and commercial credit is not available. The 2002 Act also provides for a one-time waiver for two years of the direct OL term limit on a case-by-case basis to other borrowers if certain criteria are met. The determination is not subject to administrative appeal. This rule amends 7 CFR 1941.12 to comply with these provisions. One of the statutory requirements for a case-by-case waiver is that the borrower have a ''viable farm or ranch operation.'' The Agency has adopted this requirement by referring to the existing definition of ''financially viable operation'' at 7 CFR 1941.4 and 1924.54. Another statutory requirement is that the borrower has successfully completed, or will complete within one year, borrower training under section 359 of the Consolidated Farm and Rural Development Act (CONACT). The other statutory requirements for a case-by-case waiver are that the borrower applied for commercial credit from at least two commercial lenders and was unable to obtain a commercial loan, including a loan guaranteed by the Secretary.

Emergency Loan Eligibility for Quarantine Losses

Section 5201 of the 2002 Act authorizes emergency (EM) loans for losses resulting from quarantines imposed by the Secretary under the Plant Protection Act or animal quarantine laws as defined in section 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990. This rule amends 7 CFR 764.2 to add a definition of ''quarantine'' and revise the definition of ''disaster'' to comply with this requirement.

Entity Eligibility

Section 5302 of the 2002 Act adds trusts and limited liability companies to the list of entities eligible for EM loans and direct and guaranteed OL and FO loans. Thus, 7 CFR 762.102, 764.2, 1910.4, 1924.74, 1941.4 and 1943.4 are amended by revising the definitions of ''entity'' and ''joint operation'' to comply with this requirement.

Simplified Loan Guarantee Application

Section 5307 of the 2002 Act increases the loan amount for which FSA can accept a simplified guaranteed loan application from $50,000 to $125,000. Accordingly, 7 CFR 762.102 and 762.110 have been amended to meet this requirement.

Beginning Farmer Definition

Section 5310 of the 2002 Act changes the definition of qualified beginning farmer or rancher by increasing the acres of land that these applicants may own to a maximum of 30 (instead of 25) percent of the average farm or ranch size in the county. This rule amends 7 CFR 762.102, 1941.4 and 1943.4 definitions accordingly to comply with this requirement.

Term and Interest Rate Changes for Seed Loans

Section 10103 of the 2002 Act extends to 36 (from 18) months the period of time for which the zero percent interest rate may apply to loans made under the Emergency Loan for Seed Producers Program. The Act also increases the term of these loans to the earlier of 36 months or the settlement of the bankruptcy proceeding involving AgriBiotech. These requirements are implemented in this rule by amending 7 CFR 774.18.

Eligibility Criteria for Direct Loans

Section 227(b) of the Department of Agriculture Reorganization Act of 1994 repealed a portion of section 333 of the CONACT, which contained eligibility criteria relating to an applicant's character and honesty. Therefore, this rule removes these obsolete eligibility criteria from 7 CFR 1941.12 and 1943.12.

Debt Settlement

Section 5303 of the 2002 Act provides the Secretary the authority to approve or disapprove applications for debt settlement and release of liability without the recommendation of, but after consultation with, the local FSA County Committee (COC). The COC will be consulted by the Agency prior to an action of this type to comply with this statute and ensure that all available

information is considered. Also, the previous regulation described many actions involving debt settlement processing and COC recommendation which are internal and have been removed. This rule amends 7 CFR parts 1951, 1955, 1956, 1962, and 1965 accordingly to remove references to COC recommendations.

Interest Rate Options for Loans in Servicing

Section 5305 of the 2002 Act amended the CONACT by requiring FSA to use the lowest of the interest rate in effect at the time the borrower applies for Primary Loan Servicing (PLS), the original interest rate on the loan, or the interest rate being charged for the loan type at the time of deferral, consolidation, rescheduling, or reamortization. Prior to this statutory change, only the latter two options were specified. For the first new option, the time of PLS application will be the time the complete application is received by FSA. This method will be used on program loans with regular or limited resource interest rates. This rule, therefore, revises 7 CFR 1951.909 and Exhibit A of Attachment 1 of part 1951, subpart S accordingly.

Inventory Property

Section 5308 of the Act increases the time that the Agency is allowed to sell real estate inventory property to beginning farmers and ranchers from 75 days to 135 days. Section 5308 further emphasizes the need to maximize opportunities for beginning farmers by combining or subdividing inventory property. This rule amends 7 CFR 1955.63 and 1955.107 accordingly to comply with these requirements. In addition, Exhibits G and G–1 of 7 CFR part 1955, subpart A are removed as they contain only administrative provisions which do not impact the public.

Annual Review of Borrowers

Section 5318 of the Act requires that FSA conduct annual loan assessments of direct loan borrowers. As this review was previously required twice per year, 7 CFR 1924.55 is amended to comply with this requirement.

List of Subjects

7 CFR Part 762

Agriculture, Loan programs—agriculture.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs—agriculture.

7 CFR Part 774

Agriculture, Disaster, Loan programs—agriculture.

7 CFR Part 1910

Agriculture, Credit, Loan programs—housing and community development, Low and moderate income housing, Sex discrimination.

7 CFR Part 1924

Construction, Repair, Planning, Management advice, Loan programs—agriculture, Loan programs—housing and community development.

7 CFR Part 1941

Crops, Livestock, Loan programs—agriculture, Rural areas, Youth.

7 CFR Part 1943

Crops, Loan programs—agriculture, Recreation, Water resources.

7 CFR Part 1951

Account servicing, Credit, Debt restructuring, Loan programs—agriculture, Loan Programs—housing and community development.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management.

7 CFR Part 1956

Account servicing, Accounting, Credit, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

7 CFR Part 1965

Foreclosure, Credit, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

Accordingly, 7 CFR Chapters VII and XVIII are amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

2. Amend § 762.102(b) by revising the definitions of ''Entity,'' ''Joint operation,'' the first sentence in subparagraph (5) of the ''Beginning farmer or rancher'' definition, and the second sentence of the ''Cash flow budget'' definition to read as follows:

§ 762.102 Abbreviations and definitions.

* * * * *

(b) * * *

Beginning farmer or rancher. * * *

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. * * *

* * * * *

Cash flow budget. * * * Cash flow budgets for loans under $125,000 do not require income and expenses itemized by categories.* * *

* * * * *

Entity. Cooperatives, corporations, partnerships, joint operations, trusts, or limited liability companies.

* * * * *

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property may be owned separately or jointly by the individuals.

* * * * *

3. Amend § 762.110 in paragraphs (a) introductory text, (a)(1), (a)(3), and (b) introductory text by removing ''$50,000'' everywhere it appears and adding in its place ''$125,000.''

4. Amend § 762.129 by revising paragraph (b)(2) and the last sentence of paragraph (b)(3) and adding paragraph (b)(4) to read as follows:

§ 762.129 Percent of guarantee and maximum loss.

* * * * *

(b) * * *

(2) When the purpose of an FO guarantee is to participate in the downpayment loan program;

(3) * * * The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding; or

(4) When a guaranteed OL is made to a farmer or rancher whose farm or ranch land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe.

* * * * *

PART 764—EMERGENCY FARM LOANS

5. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

6. Amend § 764.2 by revising the definitions of ''Disaster'' and ''Entity''

and by adding a definition of ''Quarantine'' to read as follows:

§ 764.2 Definitions.

* * * * *

Disaster means an event of unusual and adverse weather conditions, other natural phenomena, or quarantine, that has substantially affected producers of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area designated by the Agency.

* * * * *

Entity means a partnership, corporation, cooperative, joint operation, trust or limited liability company that is an operator of an operation engaged in farming, ranching, or aquaculture activities at the time the disaster occurs.

* * * * *

Quarantine means a quarantine imposed by the Secretary under the Plant Protection Act or animal quarantine laws (as defined in section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990).

* * * * *

PART 774—EMERGENCY LOAN FOR SEED PRODUCERS PROGRAM

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

Authority: Pub. L. 106–224.

8. Amend § 774.18 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 774.18 Interest rate, terms and security requirements.

(a) *Interest rate.* (1) The interest rate on the loan will be zero percent for 36 months or until the date of settlement of, completion of, or final distribution of assets in the bankruptcy proceeding involving AgriBiotech, whichever comes first.

* * * * *

(b) *Terms.* (1) Loans shall be due and payable upon the earlier of the settlement of the bankruptcy claim or 36 months from the date of the note.

* * * * *

PART 1910—GENERAL

9. The authority citation for part 1910 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

10. Amend §1910.4 by revising the heading of paragraph (b), adding a new sentence after the eighth sentence in paragraph (b) and revising paragraph (b)(2) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(b) *Completed Farm Loan Programs applications and additional FSA responsibilities.* * * * Applicants who request a waiver of the direct OL term limits in accordance with subpart A of part 1941 of this chapter based on the facts that their land is subject to the jurisdiction of an Indian tribe and their loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, automatically consent to the Agency releasing information as necessary to the Bureau of Indian Affairs to confirm these facts. * * *

(2) If the applicant is a cooperative, corporation, partnership, joint operation, trust, or limited liability company:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the entity by each member, or the percentage of interest in the entity held by each member.

(ii) A current personal financial statement from each member of the entity.

(iii) A current financial statement from the entity itself.

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

* * * * *

PART 1924—CONSTRUCTION AND REPAIR

11. The authority citation for part 1924 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Management Advice to Individual Borrowers and Applicants

12. Revise § 1924.55 by removing the last sentence of the introductory text, and by revising the heading, adding a first sentence, and revising the last sentence of paragraph (e) to read as follows:

§ 1924.55 Assessment of the agricultural operation.

* * * * *

(e) *Annual review.* For all borrowers, the assessment described under this section will be reviewed on at least an annual basis to monitor progress. * * * The year-end analysis under this section may be treated as the required assessment review.

13. Revise the fourth sentence of § 1924.74(b)(1) to read as follows:

§ 1924.74 Borrower Training program.

* * * * *

(b) *Processing*—

(1) *Agency review.* * * * In the case of a cooperative, corporation, partnership, joint operation, trust, or limited liability company, any individual member holding a majority interest in the entity or who is operating the farm must agree to complete the training on behalf of the entity. * * *

* * * * *

PART 1941—OPERATING LOANS

14. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures and Authorizations

15. In part 1941, subpart A, revise all references to ''a cooperative, corporation, partnership, or joint operation'' to read ''an entity.'' Also, revise all references to ''cooperative(s), corporation(s), partnership(s) or joint operation(s)'' to read ''entities.''

16. In part 1941, subpart A, revise all references to ''members, stockholders, partners, or joint operators'' to read ''members.'' Also, revise all references to ''member's, partner's, stockholder's, or joint operator's'' to read ''member's.'' And, revise all references to ''member, stockholder, partner, or joint operator'' to read ''member.''

17. Amend the first sentence of § 1941.1 by removing the words ''farm cooperatives, private domestic corporation, partnerships, and joint operations' and adding in their place the word ''entities.''

18. Amend § 1941.4 by removing the number ''25'' from the first sentence in paragraph (e) of the definition of ''Beginning farmer or rancher'' and adding in its place the number ''30,'' by adding a definition of ''entity,'' and by adding a sentence at the end of the definition of ''financially viable operation'' to read as follows:

§ 1941.4 Definitions.

* * * * *

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

* * * * *

Financially viable operation. * * * This definition only applies when considering a term limit waiver under § 1941.12.

* * * * *

19. Amend § 1941.6 by revising paragraph (c) to read as follows:

§ 1941.6 Credit elsewhere.

* * * * *

(c) Property and interest in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

* * * * *

20. Amend § 1941.12 by:

a. Removing paragraphs (a)(4) and (5);

b. Redesignating paragraphs (a)(6) through (11) as (a)(4) through (9) respectively;

c. Revising the new paragraph (a)(6);

d. Removing paragraphs (b)(5)(iii) and (iv);

e. Redesignating paragraphs (b)(5)(v) and (vi) as (b)(5)(iii) and (iv) respectively;

f. Revising paragraphs (b)(6)(i), (b)(7)(i), (b)(8)(iii) and (b)(9);

The revised text reads as follows:

§ 1941.12 Eligibility requirements.

* * * * *

(a) * * *

(6)(i) Have not executed a promissory note for a direct OL loan in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of Indian tribe, and the test for credit requirement in § 1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

(A) The applicant has a financially viable operation;

(B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

* * * * *

(b) * * *

(6) * * *

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met.

* * * * *

(7) * * *

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met by the entity and all its members.

* * * * *

(8) * * *

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section.

(9)(i) Have no member of the entity who has executed a promissory note for direct OL loans closed in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and the test for credit requirement in § 1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

(A) The applicant has a financially viable operation;

(B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

* * * * *

Subpart B—Closing Loans Secured by Chattels

21. Amend § 1941.54 by revising paragraph (b)(2) as follows and removing paragraph (b)(3):

§ 1941.54 Promissory note.

* * * * *

(b) *Signatures.* * * *

(2) *Entities.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all members of the entity.

22. Amend § 1941.57 by revising paragraph (a) to read as follows:

§ 1941.57 Security instruments.

* * * * *

(a) *Executing security instruments by borrowers.* State supplements will be issued, as necessary, to carry out the provisions of this paragraph. In order to close the loan and obtain the desired lien, security instruments will be executed by appropriate entity officials, on behalf of an entity borrower. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the security requirements for the loan request.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

23. The authority citation for part 1943 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Direct Farm Ownership Loan Policies, Procedures, and Authorizations

24. In part 1943, subpart A, revise all references to ''a cooperative, corporation, partnership, or joint operation'' to read ''an entity.'' Similarly, revise all references to ''cooperative(s), corporation(s), partnership(s) or joint operation(s)'' to read ''entities.''

25. In part 1943, subpart A, revise all references to ''members, stockholders, partners, or joint operators'' to read ''members.'' Also, revise all references to ''member's, partner's, stockholder's, or joint operator's'' to read ''member's.'' And, revise all references to ''member, stockholder, partner, or joint operator'' to read ''member.''

26. Amend § 1943.1 by removing the words ''farm cooperatives, private domestic corporations, partnerships, and joint operations'' and adding in their place the words ''and entities.''

27. Amend § 1943.4 by removing the number ''25'' from the first sentence in paragraph (e) of the definition of ''Beginning farmer or rancher'' and adding in its place the number ''30'' and

by adding a definition of ''entity'' to read as follows:

§ 1943.4 Definitions.

* * * * *

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

* * * * *

28. Amend § 1943.6 by revising paragraph (c) to read as follows:

§ 1943.6 Credit elsewhere.

* * * * *

(c) Property and interests in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals, will be considered and used by an applicant in obtaining credit from other sources.

* * * * *

29. Amend § 1943.12 by:

a. Removing paragraphs (a)(4) and (a)(5);

b. Redesignating (a)(6) through (a)(11) as (a)(4) through (a)(9) respectively;

c. Removing paragraphs (b)(4)(iii) and (b)(4)(iv);

d. Redesignating paragraphs (b)(4)(v) and (b)(4)(vi) as (b)(4)(iii) and (b)(4)(iv); and

e. Revising paragraphs (b)(5)(i), (b)(6)(i) and (b)(7) to read as follows:

§ 1943.12 Farm ownership loan eligibility requirements.

* * * * *

(b) * * *

(5) * * *

(i) The requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section must be met.

* * * * *

(6) * * *

(i) The requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section must be met by the entity applicant and all its members.

* * * * *

(7) If each member's ownership interest does not exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) All of the members of the entity are related by blood or marriage,

(ii) All of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section.

* * * * *

30. Amend § 1943.14 by revising paragraphs (c), (d)(4) and (e)(2)(i) to read as follows:

§ 1943.14 Downpayment FO loan program for beginning farmers or ranchers.

* * * * *

(c) *Loan purposes.* Loans may be made to provide an amount equal to 40 percent of the purchase price or appraised value, whichever is lower, of the farm or ranch to be acquired, unless the applicant requests a lesser amount. The remaining balance of the purchase price or appraised value, whichever is lower, not to exceed 50 percent, may be guaranteed by the Agency.

(d) * * *

(4) The other financing for the balance of the purchase price is amortized for less than 30 years and/or a balloon payment is scheduled within the 15 years of the Agency loan.

(e) * * *

(2) *Terms of loans.* (i) Each loan made under this section shall be amortized over a period of 15 years or less, at the option of the borrower.

* * * * *

31. Amend § 1943.16 by adding a new paragraph (e) to read as follows:

§ 1943.16 Loan purposes.

* * * * *

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

32. Amend § 1943.38 by removing the words ''Cooperatives or corporations'' from paragraph (g)(3)(ii) and adding in their place the word ''Entities,'' and by removing paragraph (g)(3)(iii).

PART 1951—SERVICING AND COLLECTIONS

33. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart J—Management and Collection of Nonprogram (NP) Loans

34. Amend § 1951.463 by removing and reserving paragraph (e).

Subpart S—Farm Loan Programs Account Servicing Policies

35. Amend § 1951.903 by removing the words ''recommended by the County Committee (except where the debt has been discharged through bankruptcy),'' from the second sentence of paragraph (b).

36. Amend § 1951.909 by:

a. Revising paragraphs (a)(3), (e)(1)(xii), and (e)(2)(viii);

b. Redesignating paragraph (e)(2)(ix) as (e)(2)(x);

c. Adding new paragraph (e)(2)(ix);

d. Revising paragraph (i)(2)(i).

The revised and added text reads as follows:

§ 1951.909 Processing primary loan service programs requests.

(a) * * *

(3) If a completed application includes a request for a waiver from the training required by paragraph (c)(5) of this section, the Agency will, prior to any offer of Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set out in § 1924.74 of this chapter.

* * * * *

(e) * * *

(1) * * *

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for loans made at the regular interest rate will be the lesser of:

(*1*) The lowest interest rate for that type of loan on the date a complete servicing application was received;

(*2*) The lowest interest rate for that type of loan on the date of restructure; or

(*3*) The lowest original loan note rate on any of the original notes being consolidated and/or rescheduled.

(B) The interest rate for loans made at the limited resource interest rate will be the lesser of:

(*1*) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(*2*) The limited resource interest rate for that type of loan on the date of restructure; or

(*3*) The lowest original loan note rate on any of the original notes being consolidated and/or rescheduled.

(C) OL loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(*1*) The borrower meets the requirements for the limited resource interest rate; and

(*2*) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

* * * * *

(2) * * *

(viii) Interest rates of reamortized loans will be as follows:

(A) The interest rate for loans made at the regular interest rate will be the lesser of:

(*1*) The interest rate for that type of loan on the date a complete servicing application was received;

(*2*) The interest rate for that type of loan on the date of restructure; or

(*3*) The original loan note rate of the note being reamortized.

(B) The interest rate of FO or SW loans made at the limited resource interest rate will be the lesser of:

(*1*) The limited resource interest rate for that type of loan on the date a complete servicing application was received;

(*2*) The limited resource interest rate for that type of loan on the date of restructure; or

(*3*) The original loan note rate on the note being reamortized.

(C) FO or SW loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(*1*) The borrower meets the requirements for the limited resource interest rate;

(*2*) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section; and

(*3*) For SW loans, the loan funds were used for soil and water conservation and protection purposes as set forth in § 1943.66 (a)(1) through (a)(5) of this chapter.

(D) SA payment agreement will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.

(ix) If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Promissory Note is processed and the next installment due date. The amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.

* * * * *

(i) * * *

(2) * * *

(i) If the administrative appeal process results in a determination that the borrower is eligible for Primary Loan Servicing, the servicing official will process the request pursuant to this section. The servicing official will use the information the appeal officer used in making the decision on the appeal, unless stated otherwise in the final appeal decision letter. In cases of debt restructuring resulting from appeals, the interest rate will be determined in accordance with paragraphs (e)(1)(xii) and (e)(2)(viii) of this section as applicable. If implementation of the appeal decision would cause writedown or writeoff of more than $300,000 because of interest accrued after the adverse decision, the servicing official will process the action so as to complete the transaction.

* * * * *

37–38. Amend Exhibit A to subpart S as follows:

a. In Attachment 1, Section I, Subsection 4, the paragraph entitled ''Interest Rate for Loan Servicing'' is revised.

b. In Attachment 1, Section V, the paragraphs entitled ''Approval Requirements'' are revised.

The revised text reads as follows:

Exhibit A—Notice of the Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers

* * * * *

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate of the new loan will be either the interest rate on the original loan, the interest rate on the date you submit a complete application for loan servicing, or the interest rate for that type of loan on the date of restructure, whichever is less. If you meet the eligibility requirements, you may be able to get the limited resource interest rate on OL, SW, or FO loans, if the loan was not originally approved with a limited resource rate. For information about current interest rates, contact the FSA county office.

* * * * *

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FSA account before you can be considered for debt settlement. In the case of compromise or adjustment, however, you may keep your collateral if you are unable to pay your total FSA debt and pay FSA the present market value of your collateral along with any additional amount you are able to pay as determined by FSA. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FSA will not finance a compromise or adjustment offer.

The County Committee will be consulted on all debt settlements of FLP loans. FSA must find that the statements on your application are true, and that you do not have assets or income in addition to what you stated in your application. You must also have not previously received any form of debt forgiveness from FSA on any other direct farm loan. If you qualify, your application must also be approved by the FSA State Executive Director or the FSA Administrator depending on the amount of the debt to be settled.

* * * * *

PART 1955—PROPERTY MANAGEMENT

39. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

40. Amend § 1955.10 by revising paragraphs (f)(2) and (f)(3) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(f) * * *

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* If the Agency indebtedness plus any prior liens exceeds the market value of the property, the indebtedness cannot be satisfied but a credit can be given equal to the market value less prior liens. Debt settlement will be considered in accordance with subpart B of part 1956 of this chapter.

(i) *Crediting accounts.* The Agency will credit an account by an amount equal to the market value less prior liens, unless the borrower is Native American. Native American borrower-owners will be credited with the fair market value or the Agency debt against the property, whichever is greater, provided:

(A) The borrower-owner is a member of a tribe or the tribe, and

(B) The property is located within the confines of a federally recognized Indian reservation.

(ii) *Agency approval.* The same procedure outlined in paragraphs

(f)(1)(i) through (f)(1)(iii) of this section will be followed for approving the voluntary conveyance. The conveyance will be accepted in full satisfaction of the indebtedness unless the market value of the property to be conveyed is less than the total of Government indebtedness and prior liens, and the borrower has agreed to accept a credit in the amount of the market value of the security property less prior liens, if any.

(3) *Loans to organizations.* When an offer of voluntary conveyance is received from an organization borrower, and the market value of the property being conveyed (less prior liens, if any) is less than the Government debt, full consideration must be given to the borrower's present situation and future prospects for paying all or a part of the debt.

* * * * *

41. Remove Exhibits G and G–1 to subpart A.

Subpart B—Management of Property

42. Amend § 1955.63 by revising paragraphs (a) and (b) to read as follows:

§ 1955.63 Suitability determination.

* * * * *

(a) *Determination.* The Agency will classify property that secured loans or was acquired under the CONACT as ''suitable property'' or ''surplus property'' in accordance with the definitions found in § 1955.53.

(b) *Grouping and subdividing farm properties.* To the maximum extent practicable, the Agency will maximize the opportunity for beginning farmers and ranchers to purchase inventory properties. Farm properties may be subdivided or grouped according to § 1955.140, as feasible, to carry out the objectives of the applicable loan program. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. The environmental effects of such actions will be considered pursuant to subpart G of part 1940 of this chapter.

* * * * *

Subpart C—Disposal of Inventory Property

43. Amend § 1955.107 by revising paragraphs (a)(2)(i), (b) introductory text, (b)(1), and (b)(2) to read as follows:

§ 1955.107 Sale of FSA property (CONACT).

* * * * *

(a) * * *

(2) * * *

(i) *Sale to beginning farmers/ranchers.* Not later than 135 days from the date of acquisition, FSA will sell suitable farm property, with a priority given to applicants who are classified as beginning farmers or ranchers, as defined in § 1955.103, as of the time of sale.

* * * * *

(b) *Surplus property and suitable property not sold to a beginning farmer or rancher.* Except where a lessee is exercising the option to purchase under the Homestead Protection provision of subpart S of part 1951 of this chapter, surplus property will be offered for public sale by sealed bid or auction within 15 days from the date of acquisition in accordance with § 1955.147 or § 1955.148. Suitable farm property which has been advertised for sale to a beginning farmer or rancher in accordance with paragraph (a) of this section, but has not sold within 135 days from the date of acquisition will be offered for public sale by sealed bid or auction to the highest bidder as provided in paragraph (b)(1) of this section. All prospective buyers will be notified in writing as part of the property advertisement of the presence of any highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property.

(1) *Advertising surplus property.* FSA will advertise surplus property for sale by sealed bid or auction within 15 days from the date of acquisition or, for those suitable properties not sold to beginning farmers or ranchers in accordance with this section, within 135 days of the date of acquisition.

(2) *Sale by sealed bid or auction.* Surplus real estate must be offered for public sale by sealed bid or auction and must be sold no later than 165 days from the date of acquisition to the highest bidder. Preference will be given to a cash offer which is at least *percent of the highest offer requiring credit. (*Refer to Exhibit B of RD Instruction 440.1 (available in any Agency office) for the current percentage.) Equally acceptable sealed bid offers will be decided by lot.

* * * * *

44. Amend § 1955.137 by revising the first sentences of paragraphs (b)(3)(ii) and (b)(3)(iii) to read as follows:

§ 1955.137 Real property located in special areas or having special characteristics.

* * * * *

(b) * * *

(3) * * *

(ii) After receiving the wetland determination from NRCS, FSA will review the determination for each inventory property and determine if any of the wetlands or converted wetlands identified by NRCS were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired. * * *

(iii) After FSA has completed the determination of whether the wetlands or converted wetlands located on an inventory property were used for cropland or farming, the U.S. Fish and Wildlife Service (FWS) will be contacted. * * *

* * * * *

PART 1956—DEBT SETTLEMENT

45. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

46. Remove and reserve § 1956.57 (f).

47. Amend § 1956.70 by revising paragraph (b)(3) introductory text to read as follows:

§ 1956.70 Cancellation.

* * * * *

(b) * * *

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by use of the appropriate Agency form with the attachments noted below. No attempt will be made to obtain the debtor's signature. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

* * * * *

48. Amend § 1956.84 by revising paragraph (e) to read as follows:

§ 1956.84 Approval or rejection.

* * * * *

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected will be notified of appeal rights pursuant to 7 CFR part 11.

* * * * *

49. Revise § 1956.96 to read as follows:

§ 1956.96 Delinquent adjustment agreements.

A 90-day extension for making the payments may be given by the Agency when the circumstances of the case justify an extension. A decision not to extend the time for making payments is not appealable. If the debtor is delinquent under the terms of the adjustment agreement and is likely to be financially unable to meet the terms of the agreement, the Agency may cancel the existing agreement and process a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. The cancellation of an adjustment agreement is appealable. If an agreement is cancelled, any payments received shall be retained as payments on the debt owed at the time of the adjustment agreement.

PART 1962—PERSONAL PROPERTY

50. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

51. Amend § 1962.41 by removing paragraph (f) and revising paragraph (e) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

* * * * *

(e) *Unpaid debt.* If the sale of all security results in less than full payment of the debt, the borrower may request debt settlement of the remaining debt. The servicing official will consult with the County Committee before determining if the borrower's account can be debt settled in accordance with subpart B of part 1956 of this chapter.

52. Amend § 1962.46 by revising paragraph (g)(5)(ii) to read as follows:

§ 1962.46 Deceased borrowers.

* * * * *

(g) * * *

(5) * * *

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected from the assets of the estate of the deceased borrower, including the value of any security or EO property.

* * * * *

PART 1965—REAL PROPERTY

53. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

54. Amend § 1965.26 by removing paragraphs (f)(6) and (g) and revising paragraphs (c)(2)(iv) introductory text and (f)(5) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(c) * * *

(2) * * *

(iv) The Agency approves the compromise or adjustment offer in accordance with subpart B to part 1956 of this chapter and the borrower makes a settlement offer according to the following:

* * * * *

(f) * * *

(5) If the sale of all security results in less than full payment of the debt, the borrower may submit a request for debt settlement. The servicing official will consult with the County Committee before determining if the borrower's account can be debt settled in accordance with subpart B of part 1956 of this chapter.

* * * * *

55. Amend § 1965.27 by removing and reserving paragraphs (b)(19) and (g)(6), revising paragraph (f), amending paragraph (h) by removing the words ''County Supervisor'' wherever they appear and adding in their place the words ''Agency'' and revising the fifth sentence of paragraph (h)(1) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(f) *Release of transferor from liability.* The borrower may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Release shall not be granted to any borrower or cosigner who was liable for any FLP direct loan which was reduced or terminated in a manner resulting in a loss to the Government. When the total outstanding debt is not assumed, any request for debt settlement will be processed in accordance with subpart B of part 1956.

* * * * *

(h) * * *

(1) * * * The Agency will consider the following:

* * * * *

Dated: January 31, 2003.

J. B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

Dated: February 4, 2003.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. 03–3562 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 03–011]

RIN 2115–AA97

Safety Zone: Julia Tuttle Fireworks, Biscayne Bay, Miami Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in Biscayne Bay one mile north of Julia Tuttle Causeway, Miami Beach, FL. The safety zone is established to protect boaters from the hazards associated with the Julia Tuttle fireworks display being held in Biscayne Bay. This rule is necessary to ensure safety of life on the navigable waters of the United States.

DATES: This safety zone is effective from 8 p.m. on March 6, 2003 until 11 p.m. on March 6, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket COTP Miami 03–011 and are available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FUTHER INFORMATION CONTACT: BM1 D. Vaughn and/or BM3 A. Harless at Coast Guard Group Miami, ATON/Deck Miami Beach, FL, at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM and delaying the rule's effective date is unnecessary and contrary to public safety because immediate action is necessary to protect the public and waters of the United

States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

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

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing a 840-foot circle surrounding a barge in approximate position 25°49′47″ N, 080°10′39″ W in Biscayne Bay for the Julia Tuttle fireworks display. This rule is needed to increase safety in Biscayne Bay from 8 p.m. March 6, 2003, to 10 p.m. on March 6, 2003, during the Julia Tuttle fireworks display due to the significant number of vessels in the area for this event. The safety zone is created to provide for the safety of the spectator craft in the vicinity of Biscayne Bay one mile north of Julia Tuttle Causeway, Miami Beach, FL. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port Miami. The safety zone encompasses the waters of Biscayne Bay one mile north of Julia Tuttle Causeway.

Regulatory Evaluation

This regulation 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 cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for 2 hours and vessels may be allowed to transit the zone with the express permission of the Captain of the Port of Miami.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Temporary § 165.T07–011 is added to read as follows:

§ 165.T07–011 Safety Zone: Biscayne Bay one mile North of Julia Tuttle Causeway, Miami Beach, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone encompassing a 840-foot circle surrounding a barge in approximate position 25°49′47″N, 80°10′39″W in Biscayne Bay one mile North of Julia Tuttle Causeway for the Julia Tuttle fireworks display.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Miami, FL.

(c) *Effective dates:* This rule is effective from 8 p.m. on March 6, 2003 until 10 p.m. on March 6, 2003.

Dated: January 29, 2003.

J.A. Watson,

Commander, U. S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 03–3769 Filed 2–14–03; 8:45 am]

BILLING CODE4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI88

Subsistence Management Regulations for Public Lands in Alaska

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: We, the U.S. Forest Service and U.S. Fish and Wildlife Service, are amending the regulations governing subsistence use of wildlife in Alaska by clarifying how old a person must be to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit and by removing the requirement that Regional Councils must have an odd number of members. These changes are noncontroversial and are designed to ensure that the regulations for the Federal Subsistence Management Program in Alaska are easy for the public to understand and reflect current policies.

DATES: This rule will be effective on April 21, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before April 4, 2003.

ADDRESSES: Submit written comments to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503. Submit electronic comments to *Bill_Knauer@fws.gov.* For electronic comments, please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

FOR FURTHER INFORMATION CONTACT: For Forest Service questions, contact Ken Thompson, Regional Subsistence Program Manager, USDA–FS Alaska Region, at (907) 786–3592. For Fish and Wildlife Service questions, contact Thomas H. Boyd at (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 36 CFR part 242 and 50 CFR part 100 (referred to below as ''the regulations''), authorized by title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3126), implement the Federal Subsistence Management Program on public lands in Alaska.

On May 7, 2002, we published in the **Federal Register** (67 FR 30559–30571) a final rule that made certain changes to the regulations. In that final rule, we clarified how old a person must be to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit, and we retained, without change, a long-held requirement that Regional Councils must have an odd number of members.

At the request of other agencies, in the final rule, we added language to § _____.6(b) of the regulations to clarify that, ''In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to have reasonably harvested that species yourself (or under the guidance of an adult).'' Since the publication of the final rule, we have determined that this language could be misleading and should be further clarified. Therefore, we are making editorial changes to this paragraph to make it easier to understand.

In addition, in the final rule, we retained, without change, a long-held requirement in § _____.11(b)(1) stating, ''The number of members for each Regional Council shall be established by the Board, and shall be an odd number.'' We retained the requirement that Regional Councils have an odd number of members to prevent the possibility of a tie during Council votes. Since the publication of the final rule, however, the Deputy Secretary of the Department of the Interior approved a Federal Subsistence Board recommendation to increase the size of Regional Councils to 10 or 13 members. These increases will help achieve better balance, as required by the Federal Advisory Committee Act (5 U.S.C. App.1), in Regional Councils. Further, we have learned that in Regional Council meetings, if a vote count is tied, that motion fails; therefore, our reason for requiring an odd number of members does not apply. In light of this new information, we are revising § _____.11(b)(1) to remove the requirement that Regional Councils must have an odd number of members. This change will bring this paragraph into accord with current policies.

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 45 days of publication of this rule in the **Federal Register**. Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. In the event that we do receive any adverse comments, we will engage in the normal rulemaking process to promulgate these changes to the CFR. Therefore, in this issue of the **Federal Register**, we have published a proposed rule regarding these regulatory changes. We will give the same consideration to comments submitted in response to either this direct final rule or the proposed rule; you do not need to submit comments to both documents.

As discussed above, if we receive no written adverse comments or written

notice of intent to submit adverse comments within 45 days, then this direct final rule will become effective 60 days from today. In that case, we will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming the effective date and withdrawing the related proposed rule.

Required Determinations

Regulatory Planning and Review (E.O. 12866), Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

An economic analysis is not necessary for this rule as it will not have an economic impact on any entities, large or small. This rule is not a significant rule under E.O. 12866 and, therefore, was not reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act:

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared for this rule. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments amend title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART_____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In § _____.6, paragraph (b) is revised to read as follows:

§ _____.6 Licenses, permits, harvest tickets, tags, and reports.

* * * * *

(b) In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to reasonably harvest that species yourself (or under the guidance of an adult).

* * * * *

3. In § _____.11, paragraph (b)(1), the first sentence is revised to read as follows:

§ _____.11 Regional advisory councils.

* * * * *

(b) * * *

(1) The number of members for each Regional Council shall be established by the Board. * * *

* * * * *

Dated: January 31, 2003.

Gale A. Norton,

Secretary of the Interior.

Dated: November 14, 2002.

Steven A. Brink,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 03–3741 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–11 and 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ55–248, FRL–7441–4]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by New Jersey, including revisions to the State's enhanced motor vehicle inspection and maintenance (I/M) program. This revision updates New Jersey's enhanced I/M performance standard modeling to reflect the State's plan to extend the current new vehicle inspection exemption from one inspection cycle (2 years) to two inspection cycles (4 years). The State's evaluation demonstrates that the proposed changes to the enhanced I/M program will not impact the State's ability to continue to meet its enhanced I/M emission reduction goals for current and future years. The intended effect of this action is to approve New Jersey's plan to extend the new vehicle emission inspection exemption, and the State's supporting revised performance standard modeling, which demonstrates that the enhanced I/M program continues to meet EPA's low enhanced performance standard.

EFFECTIVE DATE: This rule will be effective March 20, 2003.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2002 (67 FR 67345), EPA published a notice of proposed rulemaking regarding a SIP revision submitted by the State of New Jersey. The notice proposed to approve New Jersey's plan to extend the new vehicle emission inspection exemption from two to four years, and the State's supporting revised performance standard modeling. This new vehicle emission inspection exemption was enacted by New Jersey on July 1, 2002 as Public Law 2002, Chapter 34, and supercedes the current emission inspection test frequency set forth in New Jersey's I/M rules. The new legislation requires any new vehicle of model year 2000 and newer to be exempt from the emission inspection for 4 years, and thereafter inspected every 2 years, however, implementation of this new legislation is contingent upon approval by EPA. New Jersey's goal is to begin implementation of the new vehicle emission inspection exemption on January 1, 2003.

Also included as part of the modeling assumptions for New Jersey's revised performance standard modeling demonstration were other proposed program changes contained in the State's April 24, 2002 proposed SIP revision. For more detailed information on these proposed design changes, please see the November 5, 2002 notice of proposed rulemaking. Although the State appropriately included these proposed changes in its revised modeling since they will, if adopted, impact the overall emission reduction potential of the I/M program, EPA is not taking action on these changes in this final rulemaking. However, EPA will take formal rulemaking action on these other changes after they are adopted and formally submitted by the State.

The SIP revision was proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its regulations. The proposed SIP revision was initially submitted to EPA on August 20, 2002, and the final SIP revision was formally submitted on December 3, 2002. It should be noted that EPA did not receive any comments associated with the November 5, 2002 proposed approval of revisions to New Jersey's enhanced I/M program. A detailed description of New Jersey's submittals and EPA's rational for the proposed action were presented in the proposal referenced above and will not be restated here.

Conclusion

EPA is taking final action to approve New Jersey's December 3, 2002 SIP revision, which updates New Jersey's enhanced I/M performance standard modeling to reflect the State's plan to extend the current new vehicle inspection exemption from one inspection cycle (2 years) to two inspection cycles (4 years). In accordance with the parallel processing procedures, EPA has evaluated New Jersey's final SIP revision submitted on December 3, 2002, and finds that no substantial changes were made from the proposed SIP revision submitted on August 20, 2002. Also in the final SIP revision, New Jersey addressed the four minor issues identified by EPA during technical review of the proposed SIP revision. EPA agrees with New Jersey's responses to those comments it received which are related to the enhanced I/M program as an element of the State's SIP.

EPA is approving New Jersey's I/M SIP revision submitted on December 3, 2002. New Jersey has demonstrated through performance standard modeling that its enhanced I/M program with the new vehicle emission inspection exemption, including other proposed program design changes, continues to meet EPA's low enhanced performance standard.

Administrative Requirements

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 9, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(72) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(72) Revisions to the New Jersey State Implementation Plan (SIP) concerning the Enhanced Inspection and Maintenance Program, submitted on December 3, 2002 by the New Jersey State Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) New Jersey Revised Statutes.

(*1*) Public Law 2002, Chapter 34, paragraph 15 amending N.J.S.A. 39:8–2.c, enacted on July 1, 2002.

[FR Doc. 03–3697 Filed 2–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045; AD–FRL–7446–6]

RIN 2060–AK53

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills, which were issued on January 12, 2001 under section 112 of the Clean Air Act (CAA). The amendments clarify and consolidate the monitoring and testing requirements and add a site-specific alternative standard for one pulp mill. We are issuing these amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills if significant adverse comments are filed.

DATES: The direct final rule is effective on May 19, 2003, without further notice, unless EPA receives significant adverse comments by March 20, 2003. If significant adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** to notify the public that the rule will not take effect. The incorporation by reference of certain publications in the rule is approved by the Director of the Office of the Federal Register as of May 19, 2003.

ADDRESSES: Comments may be submitted by mail (in duplicate, if possible) to EPA Docket Center (Air Docket), U.S. EPA West (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0045. By hand delivery/courier, comments may be submitted (in duplicate, if possible) to EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0045.

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

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

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

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.860 of the national emission standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0045. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW, Washington, DC 2004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information and other information whose disclosure is restricted by statute, which are not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

Direct Final Rule. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate significant adverse comments. We anticipate no significant adverse comments because EPA received no adverse comments when we published similar amendments during 2001. Furthermore, with respect to the amendment regarding an individual sulfite pulp mill located in Cosmopolis, Washington, EPA has already received favorable comments on the amendment from the State of Washington. The EPA received one adverse comment during the CAA section 113(g) comment period on the draft settlement agreement between EPA and Weyerhaeuser Paper Company, which described the amendment at issue, which comment is being addressed directly in this notice (although this response does not bar further comment). However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the national emission standards for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills if significant adverse comments are filed.

If we receive any significant adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule, should the Agency determine to issue one. Any of the distinct amendments in today's rule for which we do not receive significant adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 21, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading the preamble to the direct final rule.

I. Background
A. Site-Specific Alternative Standard
B. Technical Corrections
II. Amendments to Subpart MM
III. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. *et seq.*
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

The EPA promulgated national emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills on January 12, 2001 (66 FR 3180). The final rule (40 CFR part 63, subpart MM) includes standards for hazardous air pollutants (HAP), as well as monitoring, performance testing, recordkeeping, and reporting requirements. The EPA established a site-specific potential compliance date under subpart MM for Georgia-Pacific Corporation's stand-alone semichemical pulp mill in Big Island, Virginia (66 FR 16400, March 26, 2001). The EPA published technical corrections to subpart MM on July 19, 2001 (66 FR 37591), which corrected the compliance date and oxygen correction equations and clarified the performance testing requirements to account for all applicable test methods and sources. Today's action includes amendments to clarify and consolidate the monitoring and testing requirements and adds a site-specific alternative standard for HAP metals for Weyerhaeuser Paper Company's sulfite pulp mill in Cosmopolis, Washington.

A. Site-Specific Alternative Standard

The NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills includes a HAP metals standard for existing sulfite combustion units, using particulate matter (PM) emissions as a surrogate for HAP metals emissions. The final rule requires existing sulfite combustion units to reduce HAP metals emissions, measured as PM, to a level less than or equal to 0.040 grains per dry standard cubic foot (gr/dscf), corrected to 8 percent oxygen (§ 63.862(a)(2)).

Following promulgation of the rule, Weyerhaeuser Paper Company requested that EPA issue a site-specific alternative standard under subpart MM for Weyerhaeuser's Cosmopolis, Washington sulfite pulp mill. The alternative standard would allow Weyerhaeuser to reduce HAP metals emissions from an onsite emission source called a hog fuel dryer in lieu of complying with the HAP metals standard for existing sulfite combustion units. The hog fuel dryer at the Cosmopolis mill is used to dry solid fuel, such as bark, prior to combustion of the fuel in an onsite boiler. The hog fuel dryer is not regulated under a NESHAP and appears to be unique. Compliance with the alternative standard will result in greater annual HAP metals emissions reductions, lower annual energy utilization, and lower compliance costs at the Cosmopolis mill than would have been achieved through compliance with the HAP metals standard for sulfite combustion units.

Weyerhaeuser's Cosmopolis, Washington mill is a magnesium-based sulfite mill with three chemical recovery furnaces. These three recovery furnaces are subject to the HAP metals standard in subpart MM for existing sulfite combustion units. The emissions from each recovery furnace are first routed through a multiclone to recover magnesium oxide (particulate) and then through a cooling tower followed by absorption towers to recover sulfur dioxide. Following the absorption towers, the emissions from the three recovery furnaces are combined and treated in an educted venturi scrubber before being emitted to the atmosphere through a common stack.

The recovery furnaces are subject to a Washington State permit PM limit of 0.1 gr/dscf. The applicable NESHAP limit of 0.040 gr/dscf, corrected to 8 percent oxygen, is more stringent and would supersede the State limit. The hog fuel dryer is also subject to a State permit PM limit of 0.1 gr/dscf. However, the hog fuel dryer is not subject to any NESHAP. The hog fuel dryer is equipped with cyclones to reduce PM emissions. The alternative standard probably cannot be achieved without installation of a fabric filter, and Weyerhaeuser intends to replace the existing cyclones on the hog fuel dryer with a fabric filter after promulgation of the site-specific alternative standard.

Environmentally beneficial practices at the Cosmopolis mill include the use of oxygen delignification and elemental chlorine-free and oxygen bleaching. The load on the recovery furnaces has increased as a result of oxygen delignification and a decision by the mill to burn sludge from onsite wastewater treatment in the recovery furnaces. Although the mill recovers energy from burning the biosolids, this practice has resulted in an increase in PM emissions from the recovery furnaces. However, the mill is still able to consistently meet its State permit PM limit.

The sulfite recovery furnaces at the Cosmopolis mill are tested monthly for PM. Based on the monthly data collected during the past 12 years, the mill cannot consistently meet EPA's NESHAP standard for HAP metals from existing sulfite recovery furnaces (0.040 gr/dscf at 8 percent oxygen, measured as PM) without a significant investment in a new emission control device. Because the exhaust gas volume from the hog fuel dryer is much smaller than the exhaust gas volume from the recovery furnaces, Weyerhaeuser determined that it would be much less costly for the Cosmopolis mill to install more efficient controls to reduce HAP metals emissions from the hog fuel dryer than from the recovery furnaces. Weyerhaeuser estimates that the capital cost of controlling the emissions from the recovery furnaces would be approximately $4 million (based on installation of a wet electrostatic precipitator) versus approximately $1.3 million to control emissions from the hog fuel dryer (based on installation of a fabric filter). The operating cost of the fabric filter for control of hog fuel dryer emissions would be about the same as the operating costs of the existing mechanical cyclone, which the fabric filter would replace. Weyerhaeuser also estimates that the operating costs of the wet electrostatic precipitator for control of recovery furnace emissions would be approximately $60,000 per year.

Weyerhaeuser conducted HAP emission tests to determine and compare the quantity of HAP metals emitted from the recovery furnaces (combined stack) versus the hog fuel dryer under current operating conditions. The recovery furnaces and hog fuel dryer were tested for the following 11 HAP metals: antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium. Based on the results of the emission tests, the sulfite recovery furnaces collectively emit approximately 212 pounds per year (lb/yr) of HAP metals, and the hog fuel dryer emits approximately 441 lb/yr. (See Docket ID No. OAR–2002–0045.) Both the recovery furnaces and hog fuel dryer emit very similar types of HAP metals. For both emission sources, the top four HAP metals emitted were manganese, lead, chromium, and nickel, accounting for 98.5 percent of the recovery furnace HAP metals emissions and 98.9 percent of the hog fuel dryer HAP metals emissions. Manganese was the predominant HAP metal emitted from both sources. The recovery furnaces emitted 0.025 pounds per hour (lb/hr) of manganese, accounting for 86 percent of the recovery furnace HAP metals emissions. The hog fuel dryer emitted 0.10 lb/hr of manganese, accounting for 97 percent of the hog fuel dryer HAP metals emissions. (See Docket ID No. OAR–2002–0045.) None of these metals are added to the mill's manufacturing process but are naturally occurring metals present in the wood chips and hog fuel processed at the mill.

Compliance with EPA's HAP metals standard for existing sulfite combustion units would reduce HAP metals emissions from the recovery furnaces by about 30 percent using PM as a surrogate for HAP metals. Assuming the same emissions reductions are achieved for HAP metals as for PM, compliance with the HAP metals standard for existing sulfite combustion units would reduce HAP metals emissions from the recovery furnaces by approximately 64 lb/yr. As an alternative to controlling HAP metals emissions from the recovery furnace, Weyerhaeuser proposes that the hog fuel dryer at their Cosmopolis, Washington mill meet a PM emission limit of 10.0 lb/hr (with PM serving as a surrogate for HAP metals emissions), which is equivalent to a PM emissions concentration of 0.030 gr/dscf. The hog fuel dryer's current PM emissions concentration is 0.081 gr/dscf. Weyerhaeuser's proposed PM emission limit for the hog fuel dryer would require that the mill reduce PM emissions from the hog fuel dryer by approximately 63 percent. Assuming the same emissions reductions are achieved for HAP metals as for PM, the total HAP metals emission reduction for the alternative standard would be approximately 278 lb/yr, which is more than four times the HAP metals

emissions reductions that would be achieved through compliance with the HAP metals standard for existing sulfite combustion units.

After reviewing the test reports and other documentation provided by Weyerhaeuser, we agree with Weyerhaeuser's request to include an alternative standard in subpart MM because the alternative achieves greater emissions reductions of the same HAP metals and does so by controlling a source otherwise unregulated under subpart MM or any other NESHAP. The emission test reports and other documents related to the alternative standard are provided in the project docket. (*See* Docket ID No. OAR–2002–0045.)

The EPA received one adverse comment on the proposed settlement agreement. The commenter maintained that once EPA learned that there was an unregulated emission point at the Cosmopolis mill, the Agency had no choice but to develop a maximum achievable control technology (MACT) standard for that emission point in addition to the MACT standard for all other emission points. The commenter further suggested that the unregulated emission point would be subject to case-by-case MACT (under section 112(j) of the Act).

The EPA appreciates this thoughtful comment, but does not agree with it. First, although the commenter's approach is permissible, it is not compelled. The EPA typically develops MACT standards for a series of aggregated plant operations, not for individual emission points, in keeping with the requirement in section 112(d)(2) to develop emission standards applicable to new or existing ''sources''. A ''source'' can include an entire facility. See sections 112(a)(3) and 111(a)(3). In this case, EPA has determined that MACT for the aggregated unit operations involved in black liquor recovery (the source category subject to this rule) is a given amount of HAP emissions. Indeed, the standard for HAP metals in the existing rule (the HAP also emitted by the hog fuel dryer) is expressed as an aggregated limit (along with an alternative standard expressing the standard on an emission point by emission point basis). See section 63.862(a)(1)(ii)(A). In this rule, EPA is providing an alternative means of complying with that MACT limit (a means which, as explained above, results in more HAP reduction than otherwise provided for in the rule). The EPA notes further that it has pursued this same approach to compliance in a number of Project XL applications. See, *e.g.* 66 FR 34119, 34120 (June 27, 2001) (final rule) and 66 FR 16637, 16640 (March 27, 2001) (proposed rule).

The commenter's further point regarding use of 112(j) to develop case-by-case MACT for the single emission point also is not compelled (and probably is not permissible). Once EPA promulgates a valid MACT standard for a source category, the Agency has fulfilled its statutory obligation and no case-by-case limitation may issue.

Finally, even if one were to accept the commenter's argument that MACT must be developed on an emission point by emission point basis, a standard for a hog fuel dryer would likely be some type of beyond-the-floor, given the absence of this emission point at other facilities and absence of controls at the one facility operating this type of unit. The EPA thus would be compelled to consider the cost, non-air quality environmental and health impacts and energy requirements of a standard (as required by section 112(d)(2)), and would not be obligated to promulgate a standard based upon consideration of those factors. Thus, even under the commenter's approach, it would not follow that a standard would result.

B. Technical Corrections

The NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills includes standards, as well as monitoring, performance testing, recordkeeping, and reporting requirements. Technical corrections to subpart MM were published by EPA on July 19, 2001, correcting the compliance date and oxygen concentration equations and clarifying the performance testing requirements to account for all applicable test methods and sources. After these technical corrections were published, it became evident that additional technical corrections were needed to provide further clarification of the monitoring and testing requirements. Today's action includes those technical corrections, which are described previously in this preamble.

II. Amendments to Subpart MM

Today's action includes amendments to clarify and consolidate the monitoring and testing requirements and adds a site-specific alternative standard for Weyerhaeuser Paper Company's sulfite pulp mill in Cosmopolis, Washington.

As described above, the alternative standard will allow the mill to reduce emissions from an onsite hog fuel dryer in lieu of complying with the standard for HAP metals for existing sulfite combustion units specified in § 63.862(a)(2). The alternative standard will limit HAP metals emissions from the hog fuel dryer by limiting PM emissions to a level less than or equal to 10.0 lb/hr. Weyerhaeuser will install a fabric filter on the hog fuel dryer to achieve compliance with the alternative standard and must continuously monitor the performance of the fabric filter using a bag leak detection system with an audible alarm system. Weyerhaeuser must perform an initial compliance test using the test methods specified in the NESHAP to demonstrate that the PM emissions from the hog fuel dryer meet the alternative standard. Weyerhaeuser also must develop and implement a written startup, shutdown, and malfunction plan that contains specific procedures to be followed for operating and maintaining the hog fuel dryer and fabric filter during periods of startup, shutdown, and malfunction, and a program of corrective action if the hog fuel dryer or fabric filter malfunctions. Weyerhaeuser must take corrective action as specified in its startup, shutdown, and malfunction plan whenever the bag leak detection alarm sounds. The Cosmopolis mill will be in violation of the alternative standard if corrective action is not initiated within 1 hour of a bag leak detection alarm, corrective action is not completed in accordance with the startup, shutdown, and malfunction plan, or the alarm is engaged for more than 5 percent of the total operating time during a 6-month block reporting period.

The EPA is granting Weyerhaeuser's request for an alternative standard for its Cosmopolis, Washington sulfite mill because compliance with the alternative standard will result in a greater reduction in HAP metals emissions than would be achieved through compliance with the HAP metals standard for existing sulfite combustion units, and at a lower cost to the mill. The HAP metals emissions reductions will be at least four times greater under the alternative standard, and energy utilization will be lower.

The changes to subpart MM resulting from inclusion of amendments to clarify the monitoring and testing requirements and addition of a site-specific alternative standard for Weyerhaeuser's Cosmopolis, Washington mill are described in Table 1 of this preamble.

TABLE 1.—SUMMARY OF AMENDMENTS TO SUBPART MM

Citation	Change
§ 63.860(b)	Change the number of referenced paragraphs from (b)(1) through (6) to (b)(1) through (7) to reflect the addition of paragraph (b)(7) (hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill) to the list of affected sources.
§ 63.860(b)(5)	Revise the definition of affected source for sulfite combustion units to exclude the units at Weyerhaeuser Paper Company's Cosmopolis, Washington mill.
§ 63.860(b)(7)	Add the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill to the list of affected sources.
§ 63.861	Add definitions in alphabetical order for Bag leak detection system, Fabric filter, and Hog fuel dryer.
§ 63.862(a)(1)(i)(B)	Introduce the terms kg/Mg and lb/ton to read kilogram per megagram and pound per ton, respectively.
§ 63.862(a)(2)	Specify the alternative standard in paragraph (d) as an exception to the HAP metals standard for existing sulfite combustion units.
§ 63.862(d)	Add an alternative standard for HAP metals for the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill.
§ 63.864	Add a site-specific monitoring plan and monitoring specifications for continuous opacity monitoring systems and continuous parameter monitoring systems to clarify the monitoring requirements. Add monitoring specifications, corrective action provisions, and violation provisions for bag leak detection systems for the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill. Allow sources to identify and exclude periods of no gas flow in calculating average parameter values by adding flow monitor provisions and data availability restrictions. Under § 63.7(a), initial performance tests (and the establishment of operating parameter values) are not required until 180 days after the compliance date. Enable sources to demonstrate whether they are in compliance during the period between the compliance date and the performance test date by adding a provision requiring sources to maintain during this period a log that details the operation and maintenance of the process and emissions control equipment. Add two provisions to this section based on provisions moved from § 63.865(e) and (f). These two provisions include procedures for establishing operating parameter values and procedures for obtaining approval of operating parameters for alternative control devices. Move three provisions in § 63.864(a)(6), (b)(1), and (b)(4) to § 63.865 so as to consolidate all performance testing provisions under § 63.865. These three provisions include performance test exemptions for new non-direct contact evaporator (NDCE) recovery furnaces equipped with a dry electrostatic precipitator (ESP) system and performance test requirements for all other sources, including those sources complying with the overall PM bubble emission limit. Delete the performance test exemption in § 63.864(b)(3) for new NDCE recovery furnaces equipped with a dry ESP system as repetitive of the same provision in § 63.864(a)(6).
§ 63.865	Add an introductory paragraph based on a provision moved from § 63.864(b)(1). This provision requires sources to conduct an initial performance test.
§ 63.865(a)(1)	Revise the term tons/d to read ton/d.
§ 63.865(a)(2)(vi)	Add a new paragraph (a)(2)(iv) based on a provision moved from § 63.864(b)(4). This provision requires sources complying with the overall PM bubble emission limit to demonstrate compliance with the approved PM emission limits for the process units using the referenced test methods and procedures.
§ 63.865(b)	Include the alternative standard in § 63.862(d) in the list of standards for which sources must determine compliance using the referenced test methods and procedures.
§ 63.865(b)(1)	Clarify that the sampling time, sample volume, and cleanup solvent requirements apply to Methods 5, 29, and 17 (40 CFR part 60, appendix A). Allow sources to use the test methods to measure concentration or mass of PM. Include the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill in the list of units to be tested.
§ 63.865(b)(2)	Revise the reference paragraph (a) or (b) of § 63.862 to read § 63.862(a) or (b).
§ 63.865(b)(3)	Include the voluntary consensus standard American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) Performance Test Code (PTC) 19.10–1981-part 10 as an alternative to Method 3B. Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, EPA is directed to use voluntary consensus standards in its regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA has identified the voluntary consensus standard ANSI/ASME PTC 19.10–1981-part 10 as an acceptable alternative to EPA Method 3B with regard to the standard's manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas.
§ 63.865(b)(5)	Revise this paragraph and add paragraphs (b)(5)(i) through (iv) to include the alternative EPA methods to Methods 1, 2, and 3 in 40 CFR part 60, appendix A (i.e., Methods 1A, 2A, 2C, 2D, 2F, 2G, 3A, and 3B) and the alternative voluntary consensus standard to Method 3B (i.e., ANSI/ASME PTC 19.10–1981-part 10).
§ 63.865(c), (c)(1), (c)(2)	Revise paragraph (c) to introduce the performance and testing requirements for all new recovery furnaces. Revise paragraph (c)(1) based on a provision moved from § 63.864(a)(6). This provision exempts new NDCE recovery furnaces equipped with a dry ESP system from conducting a performance test. Revise paragraph (c)(2) and add new paragraphs (c)(2)(i) and (c)(2)(ii) to provide the required test method (Method 308 (40 CFR part 63, appendix A)) and emission rate equations for new recovery furnaces not equipped with a dry ESP system. In paragraph (c)(2), refer to paragraphs (b)(5)(i) through (iv) for additional test methods beyond Method 308. In paragraph (c)(2)(i), introduce the terms Mg/hr and ton/hr to read megagrams per hour and tons per hour, respectively.
§ 63.865(d)	Refer to paragraphs (b)(5)(i) through (iv) for additional test methods beyond Method 25A in 40 CFR part 60, appendix A. Specify the calibration gas as propane for each Method 25A test run.
§ 63.865(d)(1)	Revise the list of variables for Equation 11 to clarify that the THC emission rate and mass emission rate must be reported as carbon.

TABLE 1.—SUMMARY OF AMENDMENTS TO SUBPART MM—Continued

Citation	Change
§ 63.865(e) and (f)	Move two provisions in § 63.865(e) and (f) to § 63.864 so as to consolidate all monitoring provisions under § 63.864. These two provisions include procedures for establishing operating parameter values and procedures for obtaining approval of operating parameters for alternative control devices.
§ 63.866(c)	Change the number of referenced paragraphs from (c)(1) through (6) to (c)(1) through (7) to reflect the addition of paragraph (c)(7) (bag leak detection system records) to the recordkeeping requirements.
§ 63.866(c)(1) and (2)	Abbreviate the terms megagrams/day and tons/day to read Mg/d and ton/d, respectively.
§ 63.866(c)(7)	Add recordkeeping requirements for the bag leak detection system for the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill.
§ 63.867(a)(3)	Add a notification of compliance status requirement for the bag leak detection system for the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington mill.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in standards that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that these amendments do not constitute a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2060–0377. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1805.03) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (MD–2822T), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr*.

Today's action makes clarifying changes to the final rule and imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of this direct final rule, the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that has fewer than 750 employees for NAICS codes 32211, 32212, and 32213 (pulp, paper, and paperboard mills); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives which minimize any significant economic impact of the proposed rule on small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of testing and monitoring and add a new compliance option. We have, therefore, concluded that today's final rule will have no adverse impacts on any small entities and may relieve burden in some cases.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the direct final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to the direct final rule.

F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments. Thus, Executive Order 13175 does not apply to the direct final rule.

G. Executive Order 13045, Protection of Children From Environmental Health risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule is not subject to Executive Order 13045, because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. One voluntary consensus standard, ANSI/ASME PTC 19.10–1981—Part 10 (''Flue and Exhaust Gas Analysis''), has been identified as an acceptable alternative to EPA Method 3B for the purposes of this action. The voluntary consensus standard ANSI/ASME PTC 19.10–1981—Part 10 is cited in today's action for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ANSI/ASME PTC 19.10–1981—Part 10 is an acceptable alternative to EPA Method 3B. The EPA is not proposing/adopting any other voluntary consensus standards in this action.

J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by SBREFA of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. The direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). The direct final rule will become effective on May 19, 2003, unless significant adverse comments are received by March 20, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: January 27, 2003.

Christine Todd Whitman,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 63.14 is amended by revising paragraph (i) and removing paragraph (j) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) The following materials are available for purchase from at least one of the following addresses: ASME International, Orders/Inquiries, P.O. Box 2900, Fairfield, NJ 07007–2900; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112.

(1) ASME standard number QHO–1–1994, ''Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators,'' IBR approved for § 63.1206(c)(6)(iii).

(2) ASME standard number QHO–1a-1996 Addenda to QHO–1–1994, ''Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators,'' IBR approved for § 63.1206(c)(6)(iii).

(3) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.865(b), 63.3360(e)(1)(iii), 63.4166(a)(3), and 63.5160(d)(1)(iii).

* * * * *

Subpart MM—[Amended]

3. Section 63.860 is amended by:

a. Revising paragraph (b) introductory text;

b. Revising paragraph (b)(5); and

c. Adding paragraph (b)(7).

The revisions and addition read as follows:

§ 63.860 Applicability and designation of affected source.

* * * * *

(b) *Affected sources.* The requirements of this subpart apply to each new or existing affected source listed in paragraphs (b)(1) through (7) of this section:

* * * * *

(5) Each new or existing sulfite combustion unit located at a sulfite pulp mill, except such existing units at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. AP–10).

* * * * *

(7) The requirements of the alternative standard in § 63.862(d) apply to the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14).

* * * * *

4. Section 63.861 is amended by adding, in alphabetical order, definitions for the terms *Bag leak detection system, Fabric filter,* and *Hog fuel dryer* to read as follows:

§ 63.861 Definitions.

* * * * *

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative PM loadings.

* * * * *

Fabric filter means an air pollution control device used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

* * * * *

Hog fuel dryer means the equipment that combusts fine particles of wood waste (hog fuel) in a fluidized bed and directs the heated exhaust stream to a rotary dryer containing wet hog fuel to be dried prior to combustion in the hog fuel boiler at Weyerhaeuser Paper Company's Cosmopolis, Washington facility. The hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility is Emission Unit no. HD–14.

* * * * *

5. Section 63.862 is amended by:

a. Revising paragraph (a)(1)(i)(B);

b. Revising paragraph (a)(2); and

c. Adding paragraph (d).

The revisions and addition read as follows:

§ 63.862 Standards.

(a) *Standards for HAP metals: existing sources.*

(1) * * *

(i) * * *

(B) The owner or operator of each existing kraft or soda smelt dissolving tank must ensure that the concentration of PM in the exhaust gases discharged to the atmosphere is less than or equal to 0.10 kilogram per megagram (kg/Mg) (0.20 pound per ton (lb/ton)) of black liquor solids fired.

* * * * *

(2) Except as specified in paragraph (d) of this section, the owner or operator of each existing sulfite combustion unit must ensure that the concentration of PM in the exhaust gases discharged to the atmosphere is less than or equal to 0.092 g/dscm (0.040 gr/dscf) corrected to 8 percent oxygen.

* * * * *

(d) *Alternative standard.* As an alternative to meeting the requirements of paragraph (a)(2) of this section, the owner or operator of the existing hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14) must ensure that the mass of PM in the exhaust gases discharged to the atmosphere from the hog fuel dryer is less than or equal to 4.535 kilograms per hour (kg/hr) (10.0 pounds per hour (lb/hr)).

6. Section 63.864 is revised to read as follows:

§ 63.864 Monitoring requirements.

(a) *General.* For each monitoring system required in this section, the owner or operator of each affected source or process unit must develop and make available for inspection by the Administrator, upon request, a site-specific monitoring plan that addresses the provisions in paragraphs (a)(1) through (6) of this section.

(1) Installation of the sampling probe or other interface at a measurement location relative to each affected source or process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), and (4)(ii);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d)(2); and

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of §§ 63.10(c), (e)(1), (e)(2)(i) and 63.866.

(b) The owner or operator of each affected source or process unit must conduct a performance evaluation of each monitoring system in accordance with the site-specific monitoring plan.

(c) The owner or operator of each affected source or process unit must operate and maintain the monitoring system in continuous operation according to the site-specific monitoring plan.

(d) *Continuous opacity monitoring system (COMS).* The owner or operator of each affected kraft or soda recovery furnace or lime kiln equipped with an ESP must install, calibrate, maintain, and operate a COMS according to the provisions in paragraphs (d)(1) through (4) of this section.

(1) Each COMS must be installed, operated, and maintained according to Performance Specification 1 of 40 CFR part 60, appendix B.

(2) A performance evaluation of each COMS must be conducted according to the requirements in § 63.8 and according to Performance Specification 1 of 40 CFR part 60, appendix B.

(3) As specified in § 63.8(c)(4)(i), each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) The COMS data must be reduced as specified in § 63.8(g)(2).

(e) *Continuous parameter monitoring system (CPMS).* For each CPMS required in this section, the owner or operator of each affected source or process unit must meet the requirements in paragraphs (e)(1) through (14) of this section.

(1) Satisfy all requirements of performance specifications for CPMS upon promulgation of such performance specifications.

(2) Satisfy all requirements of quality assurance (QA) procedures for CPMS upon promulgation of such QA procedures.

(3) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(4) To calculate a valid hourly average, there must be at least four equally spaced values for that hour, excluding data collected during the periods described in paragraph (e)(6) of this section.

(5) Have valid hourly data for at least 75 percent of the hours during the averaging period.

(6) The CPMS data taken during periods in which the control devices are not functioning in controlling emissions, as indicated by periods of no gas flow for all or a portion of an affected source or process unit, must not be considered in the averages.

(7) Calculate 3-hour averages using all of the valid hourly averages for each operating day during the semiannual reporting period.

(8) Record the results of each inspection, calibration, and validation check.

(9) Except for redundant sensors, any device that is used to conduct an initial validation or accuracy audit of a CPMS must meet the accuracy requirements specified in paragraphs (e)(9)(i) and (ii) of this section.

(i) The device must have an accuracy that is traceable to National Institute of Standards and Technology standards.

(ii) The device must be at least three times as accurate as the required accuracy for the CPMS.

(10) The owner or operator of each affected kraft or soda recovery furnace, kraft or soda lime kiln, sulfite combustion unit, or kraft or soda smelt dissolving tank equipped with a wet scrubber must install, calibrate, maintain, and operate a CPMS that can be used to determine and record the pressure drop across the scrubber and the scrubbing liquid flow rate using the procedures in § 63.8(c), as well as the procedures in paragraphs (e)(10)(i) and (ii) of this section:

(i) The monitoring device used for the continuous measurement of the pressure drop of the gas stream across the scrubber must be certified by the manufacturer to be accurate to within a gage pressure of ±500 pascals (±2 inches of water gage pressure); and

(ii) The monitoring device used for continuous measurement of the scrubbing liquid flow rate must be certified by the manufacturer to be accurate within ±5 percent of the design scrubbing liquid flow rate.

(11) The owner or operator of each affected semichemical combustion unit equipped with an RTO must install, calibrate, maintain, and operate a CPMS that can be used to determine and record the operating temperature of the RTO using the procedures in § 63.8(c). The monitor must compute and record the operating temperature at the point of incineration of effluent gases that are emitted using a temperature monitor accurate to within ±1 percent of the temperature being measured.

(12) The owner or operator of the affected hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14) must meet the requirements in paragraphs (e)(12)(i) through (xi) of this section for each bag leak detection system.

(i) The owner or operator must install, calibrate, maintain, and operate each triboelectric bag leak detection system according to the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center, MD–D205–02, Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network under Emission Measurement Center Continuous Emission Monitoring. The owner or operator must install, calibrate, maintain, and operate other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(ii) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(iii) The bag leak detection system sensor must provide an output of relative PM loadings.

(iv) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(v) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(vi) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(vii) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(ix) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance.''

(x) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in the site-specific

monitoring plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(xi) The owner or operator must record the results of each inspection, calibration, and validation check.

(13) The owner or operator of each affected source or process unit that uses an ESP, wet scrubber, RTO, or fabric filter may monitor alternative control device operating parameters subject to prior written approval by the Administrator.

(14) The owner or operator of each affected source or process unit that uses an air pollution control system other than an ESP, wet scrubber, RTO, or fabric filter must provide to the Administrator an alternative monitoring request that includes the site-specific monitoring plan described in paragraph (a) of this section, a description of the control device, test results verifying the performance of the control device, the appropriate operating parameters that will be monitored, and the frequency of measuring and recording to establish continuous compliance with the standards. The alternative monitoring request is subject to the Administrator's approval. The owner or operator of the affected source or process unit must install, calibrate, operate, and maintain the monitor(s) in accordance with the alternative monitoring request approved by the Administrator. The owner or operator must include in the information submitted to the Administrator proposed performance specifications and quality assurance procedures for the monitors. The Administrator may request further information and will approve acceptable test methods and procedures. The owner or operator must monitor the parameters as approved by the Administrator using the methods and procedures in the alternative monitoring request.

(f) If flow to a control device could be intermittent, the owner or operator must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no gas flow.

(g) The owner or operator of each affected source or process unit complying with the gaseous organic HAP standard of § 63.862(c)(1) through the use of an NDCE recovery furnace equipped with a dry ESP system is not required to conduct any continuous monitoring to demonstrate compliance with the gaseous organic HAP standard.

(h) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), the owner or operator of the affected source or process unit must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating, including periods of startup, shutdown, and malfunction.

(i) The owner or operator of an affected source or process unit may not use data recorded during monitoring malfunctions, associated repairs, required quality assurance or control activities, and periods of no gas flow for all or a portion of an affected source or process unit in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. The owner or operator must use all of the data collected during all other periods in assessing the operation of the control device and associated control system.

(j) *Determination of operating ranges.* (1) During the initial performance test required in § 63.865, the owner or operator of any affected source or process unit must establish operating ranges for the monitoring parameters in paragraphs (e)(10) through (14) of this section, as appropriate; or

(2) The owner or operator may base operating ranges on values recorded during previous performance tests or conduct additional performance tests for the specific purpose of establishing operating ranges, provided that test data used to establish the operating ranges are or have been obtained using the test methods required in this subpart. The owner or operator of the affected source or process unit must certify that all control techniques and processes have not been modified subsequent to the testing upon which the data used to establish the operating parameter ranges were obtained.

(3) The owner or operator of an affected source or process unit may establish expanded or replacement operating ranges for the monitoring parameter values listed in paragraphs (e)(10) through (14) of this section and established in paragraph (j)(1) or (2) of this section during subsequent performance tests using the test methods in § 63.865.

(4) The owner or operator of the affected source or process unit must continuously monitor each parameter and determine the arithmetic average value of each parameter during each performance test. Multiple performance tests may be conducted to establish a range of parameter values.

(5) During the period of each performance test, the owner or operator of the affected source or process unit must establish the operating range for each monitoring parameter according to the requirements in paragraphs (j)(5)(i) and (ii) of this section.

(i) For wet scrubbers, the owner or operator must record the pressure drop across the scrubber and the scrubbing liquid flow rate over the same time period as the performance test while the vent stream is routed and constituted normally. The owner or operator must locate the pressure and flow monitoring devices in positions that provide representative measurements of these parameters.

(ii) For RTO, the owner or operator must record the operating temperature averaged over the same time period as the performance test. The owner or operator must locate the temperature monitor in a position that provides a representative temperature.

(6) During the period, if any, between the compliance date specified for the affected source in § 63.863 and the date upon which monitoring systems have been installed and validated and any applicable operating ranges for monitoring parameters have been set, the owner or operator of the affected source or process unit must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(k) *On-going compliance provisions.* (1) Following the compliance date, owners or operators of all affected sources or process units are required to implement corrective action, as specified in the startup, shutdown, and malfunction plan prepared under § 63.866(a) if the monitoring exceedances in paragraphs (k)(1)(i) through (vi) of this section occur:

(i) For a new or existing kraft or soda recovery furnace or lime kiln equipped with an ESP, when the average of ten consecutive 6-minute averages result in a measurement greater than 20 percent opacity;

(ii) For a new or existing kraft or soda recovery furnace, kraft or soda smelt dissolving tank, kraft or soda lime kiln, or sulfite combustion unit equipped with a wet scrubber, when any 3-hour average parameter value is outside the range of values established in paragraph (j) of this section.

(iii) For a new or existing semichemical combustion unit equipped with an RTO, when any 1-hour average temperature falls below

the temperature established in paragraph (j) of this section;

(iv) For the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), when the bag leak detection system alarm sounds.

(v) For an affected source or process unit equipped with an ESP, wet scrubber, RTO, or fabric filter and monitoring alternative operating parameters established in paragraph (e)(13) of this section, when any 3-hour average value is outside the range of parameter values established in paragraph (j) of this section; and

(vi) For an affected source or process unit equipped with an alternative air pollution control system and monitoring operating parameters approved by the Administrator as established in paragraph (e)(14) of this section, when any 3-hour average value is outside the range of parameter values established in paragraph (j) of this section.

(2) Following the compliance date, owners or operators of all affected sources or process units are in violation of the standards of § 63.862 if the monitoring exceedances in paragraphs (k)(2)(i) through (vii) of this section occur:

(i) For an existing kraft or soda recovery furnace equipped with an ESP, when opacity is greater than 35 percent for 6 percent or more of the operating time within any quarterly period;

(ii) For a new kraft or soda recovery furnace or a new or existing lime kiln equipped with an ESP, when opacity is greater than 20 percent for 6 percent or more of the operating time within any quarterly period;

(iii) For a new or existing kraft or soda recovery furnace, kraft or soda smelt dissolving tank, kraft or soda lime kiln, or sulfite combustion unit equipped with a wet scrubber, when six or more 3-hour average parameter values within any 6-month reporting period are outside the range of values established in paragraph (j) of this section;

(iv) For a new or existing semichemical combustion unit equipped with an RTO, when any 3-hour average temperature falls below the temperature established in paragraph (j) of this section;

(v) For the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), when corrective action is not initiated within 1 hour of a bag leak detection system alarm, corrective action is not completed in accordance with the startup, shutdown, and malfunction plan, and the alarm is engaged for more than 5 percent of the total operating time in a 6-month block reporting period. In calculating the operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if corrective action is not initiated within 1 hour, the alarm time is counted as the actual amount of time taken to initiate corrective action.

(vi) For an affected source or process unit equipped with an ESP, wet scrubber, RTO, or fabric filter and monitoring alternative operating parameters established in paragraph (e)(13) of this section, when six or more 3-hour average values within any 6-month reporting period are outside the range of parameter values established in paragraph (j) of this section; and

(vii) For an affected source or process unit equipped with an alternative air pollution control system and monitoring operating parameters approved by the Administrator as established in paragraph (e)(14) of this section, when six or more 3-hour average values within any 6-month reporting period are outside the range of parameter values established in paragraph (j) of this section.

(3) For purposes of determining the number of nonopacity monitoring exceedances, no more than one exceedance will be attributed in any given 24-hour period.

7. Section 63.865 is amended by:

a. Adding § 63.865 introductory text, revising paragraph (a)(1), and adding paragraph (a)(2)(vi);

b. Revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(3), and (b)(5), and adding paragraphs (b)(5)(i) through (iv);

c. Revising paragraph (c);

d. Revising paragraphs (d) introductory text and (d)(1); and

e. Removing paragraphs (e) and (f).

The revisions and additions read as follows:

§ 63.865 Performance test requirements and test methods

The owner or operator of each affected source or process unit subject to the requirements of this subpart is required to conduct an initial performance test using the test methods and procedures listed in § 63.7 and paragraph (b) of this section, except as provided in paragraph (c)(1) of this section.

(a) * * *

(1) Determine the overall PM emission limit for the chemical recovery system at the mill using Equation 1 of this section as follows:

$$EL_{PM} = \frac{\left[\left(C_{ref,\,RF}\right)\left(Q_{RFtot}\right) + \left(C_{ref,\,LK}\right)\left(Q_{LKtot}\right)\right](F1)}{\left(BLS_{tot}\right) + ER1_{ref,\,SDT}} \qquad \text{(Eq. 1)}$$

Where:

EL_{PM} = Overall PM emission limit for all existing process units in the chemical recovery system at the kraft or soda pulp mill, kg/Mg (lb/ton) of black liquor solids fired;

$C_{ref,RF}$ = Reference concentration of 0.10 g/dscm (0.044 gr/dscf) corrected to 8 percent oxygen for existing kraft or soda recovery furnaces;

Q_{RFtot} = Sum of the average volumetric gas flow rates measured during the performance test and corrected to 8 percent oxygen for all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill, dry standard cubic meters per minute (dscm/min) (dry standard cubic feet per minute [dscf/min]);

$C_{ref,LK}$ = Reference concentration of 0.15 g/dscm (0.064 gr/dscf) corrected to 10 percent oxygen for existing kraft or soda lime kilns;

Q_{LKtot} = Sum of the average volumetric gas flow rates measured during the performance test and corrected to 10 percent oxygen for all existing lime kilns in the chemical recovery system at the kraft or soda pulp mill, dscm/min (dscf/min);

F1 = Conversion factor, 1.44 minutes • kilogram/day • gram (min • kg/d • g) (0.206 minutes • pound/day • grain [min • lb/d • gr]);

BLS_{tot} = Sum of the average black liquor solids firing rates of all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill measured during the performance test, megagrams per day (Mg/d) (tons per day [ton/d]) of black liquor solids fired; and

$ER1_{ref,SDT}$ = Reference emission rate of 0.10 kg/Mg (0.20 lb/ton) of black liquor solids fired for existing kraft or soda smelt dissolving tanks.

(2) * * *

(vi) After the Administrator has approved the PM emissions limits for each kraft or soda recovery furnace, smelt dissolving tank, and lime kiln, the owner or operator complying with an overall PM emission limit established in § 63.862(a)(1)(ii) must demonstrate compliance with the HAP metals standard by demonstrating compliance with the approved PM emissions limits for each affected kraft or soda recovery furnace, smelt dissolving tank, and lime kiln, using the test methods and procedures in paragraph (b) of this section.

(b) The owner or operator seeking to determine compliance with § 63.862(a), (b), or (d) must use the procedures in paragraphs (b)(1) through (6) of this section.

(1) For purposes of determining the concentration or mass of PM emitted from each kraft or soda recovery furnace, sulfite combustion unit, smelt dissolving tank, lime kiln, or the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), Method 5 or 29 in appendix A of 40 CFR part 60 must be used, except that Method 17 in appendix A of 40 CFR part 60 may be used in lieu of Method 5 or Method 29 if a constant value of 0.009 g/dscm (0.004 gr/dscf) is added to the results of Method 17, and the stack temperature is no greater than 205 °C (400 °F). For Methods 5, 29, and 17, the sampling time and sample volume for each run must be at least 60 minutes and 0.90 dscm (31.8 dscf), and water must be used as the cleanup solvent instead of acetone in the sample recovery procedure.

(2) For sources complying with § 63.862(a) or (b), the PM concentration must be corrected to the appropriate oxygen concentration using Equation 7 of this section as follows:

$$C_{corr} = C_{meas} \times \frac{(21 - X)}{(21 - Y)} \qquad \text{(Eq. 7)}$$

Where:

C_{corr} = The measured concentration corrected for oxygen, g/dscm (gr/dscf);

C_{meas} = The measured concentration uncorrected for oxygen, g/dscm (gr/dscf);

X = The corrected volumetric oxygen concentration (8 percent for kraft or soda recovery furnaces and sulfite combustion units and 10 percent for kraft or soda lime kilns); and

Y = The measured average volumetric oxygen concentration.

(3) Method 3A or 3B in appendix A of 40 CFR part 60 must be used to determine the oxygen concentration. The voluntary consensus standard ANSI/ASME PTC 19.10–1981—Part 10 (incorporated by reference—see § 63.14) may be used as an alternative to using Method 3B. The gas sample must be taken at the same time and at the same traverse points as the particulate sample.

* * * * *

(5)(i) For purposes of selecting sampling port location and number of traverse points, Method 1 or 1A in appendix A of 40 CFR part 60 must be used;

(ii) For purposes of determining stack gas velocity and volumetric flow rate, Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A of 40 CFR part 60 must be used;

(iii) For purposes of conducting gas analysis, Method 3, 3A, or 3B in appendix A of 40 CFR part 60 must be used. The voluntary consensus standard ANSI/ASME PTC 19.10–1981—Part 10 (incorporated by reference—see § 63.14) may be used as an alternative to using Method 3B; and

(iv) For purposes of determining moisture content of stack gas, Method 4 in appendix A of 40 CFR part 60 must be used.

* * * * *

(c) The owner or operator of each affected source or process unit complying with the gaseous organic HAP standard in § 63.862(c)(1) must demonstrate compliance according to the provisions in paragraphs (c)(1) and (2) of this section.

(1) The owner or operator complying through the use of an NDCE recovery furnace equipped with a dry ESP system is not required to conduct any performance testing to demonstrate compliance with the gaseous organic HAP standard.

(2) The owner or operator complying without using an NDCE recovery furnace equipped with a dry ESP system must use Method 308 in appendix A of this part, as well as the methods listed in paragraphs (b)(5)(i) through (iv) of this section. The sampling time and sample volume for each Method 308 run must be at least 60 minutes and 0.014 dscm (0.50 dscf), respectively.

(i) The emission rate from any new NDCE recovery furnace must be determined using Equation 9 of this section as follows:

$$ER_{NDCE} = \frac{(MR_{meas})}{BLS} \qquad \text{(Eq. 9)}$$

Where:

ER_{NDCE} = Methanol emission rate from the NDCE recovery furnace, kg/Mg (lb/ton) of black liquor solids fired;

MR_{meas} = Measured methanol mass emission rate from the NDCE recovery furnace, kg/hr (lb/hr); and

BLS = Average black liquor solids firing rate of the NDCE recovery furnace, megagrams per hour (Mg/hr) (tons per hour (ton/hr)) determined using process data measured during the performance test.

(ii) The emission rate from any new DCE recovery furnace system must be determined using Equation 10 of this section as follows:

$$ER_{DCE} = \left[\frac{(MR_{meas,\,RF})}{BLS_{RF}}\right] + \left[\frac{MR_{meas,\,BLO}}{BLS_{BLO}}\right] \qquad \text{(Eq. 10)}$$

Where:

ER_{DCE} = Methanol emission rate from each DCE recovery furnace system, kg/Mg (lb/ton) of black liquor solids fired;

$MR_{meas,RF}$ = Average measured methanol mass emission rate from each DCE recovery furnace, kg/hr (lb/hr);

$MR_{meas,BLO}$ = Average measured methanol mass emission rate from the black liquor oxidation system, kg/hr (lb/hr);

BLS_{RF} = Average black liquor solids firing rate for each DCE recovery furnace, Mg/hr (ton/hr) determined using process data measured during the performance test; and

BLS_{BLO} = The average mass rate of black liquor solids treated in the black liquor oxidation system, Mg/hr (ton/hr) determined using process data measured during the performance test.

(d) The owner or operator seeking to determine compliance with the gaseous organic HAP standards in § 63.862(c)(2) for semichemical combustion units must use Method 25A in appendix A of 40 CFR part 60, as well as the methods listed in paragraphs (b)(5)(i) through (iv) of this section. The sampling time for each Method 25A run must be at least 60 minutes. The calibration gas for each Method 25A run must be propane.

(1) The emission rate from any new or existing semichemical combustion unit must be determined using Equation 11 of this section as follows:

$$ER_{SCCU} = \frac{(THC_{meas})}{BLS} \qquad \text{(Eq. 11)}$$

Where:

ER_{SCCU} = THC emission rate reported as carbon from each semichemical combustion unit, kg/Mg (lb/ton) of black liquor solids fired;

THC_{meas} = Measured THC mass emission rate reported as carbon, kg/hr (lb/hr); and

BLS = Average black liquor solids firing rate, Mg/hr (ton/hr); determined using process data measured during the performance test.

* * * * *

8. Section 63.866 is amended by:

a. Revising paragraph (c) introductory text;

b. Revising paragraph (c)(1);

c. Revising paragraph (c)(2); and

d. Adding paragraph (c)(7).

The revisions and addition read as follows:

§ 63.866 Recordkeeping requirements.

* * * * *

(c) In addition to the general records required by § 63.10(b)(2), the owner or operator must maintain records of the information in paragraphs (c)(1) through (7) of this section:

(1) Records of black liquor solids firing rates in units of Mg/d or ton/d for all recovery furnaces and semichemical combustion units;

(2) Records of CaO production rates in units of Mg/d or ton/d for all lime kilns;

* * * * *

(7) For the bag leak detection system on the hog fuel dryer fabric filter at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14), records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

* * * * *

9. Section 63.867 is amended by adding paragraph (a)(3) to read as follows:

§ 63.867 Reporting requirements.

(a) * * *

(3) In addition to the requirements in subpart A of this part, the owner or operator of the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington facility (Emission Unit no. HD–14) must include analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.864(a)(7) in the Notification of Compliance Status.

* * * * *

[FR Doc. 03–3702 Filed 2–14–03; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: This rule is effective as of February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; (202) 336–8817; *mcondray@lsc.gov.*

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Poverty Guidelines. The revised figures for 2003 set out below are equivalent to 125% of the current Poverty Guidelines as published on February 7, 2003 (68 FR 6457).

List of Subjects in 45 CFR 1611

Grant programs—law, Legal services.

For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

Appendix A of Part 1611—Legal Services Corporation 2003 Poverty Guidelines*

Size of family unit	48 Contiguous States and the District of Columbia[i]	Alaska[ii]	Hawaii[iii]
1	$11,225	$14,013	$12,913
2	15,150	18,925	17,425
3	19,075	23,838	21,938
4	23,000	28,750	26,450
6	30,850	38,575	35,475
7	34,775	43,488	39,988
8	38,700	48,400	44,500

*The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[i] For family units with more than eight members, add $3,925 for each additional member in a family.

[ii] For family units with more than eight members, add $4,913 for each additional member in a family.

[iii] For family units with more than eight members, add $4,513 for each additional member in a family.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–3780 Filed 2–14–03; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 020603C]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

ACTION: Notice of fishing season dates.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 1, 2003, and will close 1200 hrs, A.l.t., November 15, 2003. This period is the same as the 2003 IFQ and Community Development Quota season for Pacific halibut adopted by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

DATES: Effective 1200 hrs, A.l.t., March 1, 2003, 1200 hrs, A.l.t., November 15, 2003.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) with fixed gear in the IFQ regulatory defined in § 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ program will open 1200 hrs, A.l.t., March 1, 2003, and will close 1200 hrs, A.l.t., November 15, 2003. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, thus preventing the accomplishment of the management objective for simultaneous opening of these two fisheries.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.23(g)(1) and is exempt fromreview under Executive Order 12866.

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

Dated: February 11, 2003.

Richard W. Surdi,

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

[FR Doc. 03–3847 Filed 2–12–03; 4:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 32
Tuesday, February 18, 2003

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Part 1470

Conservation Security Program

AGENCY: Commodity Credit Corporation and the Natural Resources Conservation Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Conservation Security Program (CSP) is authorized by Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002. The Natural Resources Conservation Service (NRCS) administers CSP. Under CSP, NRCS is authorized to provide financial and technical assistance to owners and operators of agricultural operations to promote conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and other conservation purposes. NRCS is interested in obtaining public input before developing a proposed regulation.

This advance notice is intended to give the public the opportunity to comment on key issues that have been raised regarding the implementation of the program. These comments will help NRCS in the agency's development of a proposed rule. NRCS intends to publish the proposed rule in 2003 and therefore has narrowed the comment period for this advance notice to 30 days. The public will have another opportunity to provide input during the comment period for the proposed rule prior to NRCS publishing a final rule for the program.

DATES: Comments must be received in writing by March 20, 2003.

ADDRESSES: Send comments in writing, by mail, to Conservation Operations Division, Natural Resources Conservation Service, PO Box 2890, or by e-mail to *FarmBillRules@usda.gov;* Attn: Conservation Security Program. This Advance Notice of Proposed Rulemaking may also be accessed via the Internet through the NRCS homepage, at *http://www.nrcs.usda.gov,* and by selecting Farm Bill 2002. All comments, including names and addresses when provided, are placed in the record and are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, NRCS, PO Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; fax: (202) 720–4265; submit e-mail to: *mark.berkland@usda.gov,* Attention: Conservation Security Program.

SUPPLEMENTARY INFORMATION:

General Information about the Conservation Security Program

The Farm Security and Rural Investment Act of 2002 (The 2002 Act) (Pub. L. 107–171) amended the Food Security Act of 1985 to authorize the Conservation Security Program (CSP). CSP is administered by USDA's Natural Resources Conservation Service (NRCS). CSP is a voluntary program that provides financial and technical assistance to promote the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Working lands include cropland, grassland, prairie land, improved pasture, and range land, as well as forested land that is an incidental part of an agriculture operation.

In keeping with principles outlined in the USDA publication, ''Food and Agriculture Policy—Taking Stock for the New Century'', the Secretary's vision for CSP's unique role within USDA conservation programs is:

(1) To identify and meaningfully reward those farmers and ranchers meeting the very highest standards of conservation and environmental management on their operations;

(2) To create powerful incentives for other producers to meet those same standards of conservation performance on their operations; and

(3) To provide public benefits for generations to come.

In short, CSP should reward the best and motivate the rest.

The intent of CSP is to support ongoing conservation stewardship of agricultural lands by providing assistance to producers to maintain and enhance natural resources. The program is available in all 50 States, the Caribbean Area and the Pacific Basin area. The program provides equitable access to benefits to all producers, regardless of size of operation, crops produced, or geographic location.

NRCS is seeking public comment to help the agency develop a proposed rule. The public will have the opportunity to provide additional input during the proposed rule's comment period prior to the publication of a final rule.

Under the statute, CSP is available on cropland, grassland, prairie land, improved pasture, and range land, as well as certain forested land that is an incidental part of an agriculture operation.

Background

According to statute, an inventory will be conducted to identify resource concerns and determine the extent of conservation treatment that is being applied and maintained on their land. Authorized payments include a base payment determined by the treatment level, cost-share for applying conservation practices, maintenance payments for applied conservation practices, and enhanced payments for treatment that exceeds the minimum criteria. A three-tiered approach is used when offering payments.

If a producer desires to move to a higher tier, cost-share payments for needed structural practices are available through the CSP at up to 75 percent of the cost of the new practice, or up to 90 percent in the case of beginning farmers or ranchers. Participants may contribute to the cost of the new practice through in-kind sources, such as personal labor, use of personal equipment, donated labor or materials, and use of on-hand or approved used materials. Cost-shared practices are to be maintained for the life of the practice. All needed practices and management must be in place and maintained before a producer can move to the next tier. Similar to other United States Department of Agriculture (USDA) conservation programs, the 2002 Act requires that the Conservation Security Program (CSP) provide financial incentives to agricultural producers that undertake new

conservation efforts that meet high environmental standards. However, unlike other USDA conservation programs, the 2002 Act requires that CSP provides financial assistance for maintaining conservation. A clear intent of the program is to financially reward producers for significant environmental goods and services they provide to the public through their annual and ongoing conservation efforts. CSP, therefore, raises new and important issues that have not been confronted previously for traditional conservation programs.

NRCS undertook two projects to identify and better understand those elements in the design of the program that would have the most influence on its performance. In the first project, the firm, Plexus Marketing Group, was retained to conduct nine focus groups to obtain inputs from representative agricultural and stakeholder groups regarding key elements of the CSP to assist NRCS in developing program rules. In the second project, the Soil and Water Conservation Society (SWCS) organized five workshops to obtain feedback on CSP and its implementation from producers and NRCS field staff.

The Plexus focus groups were held as follows:

Three (3) were conducted in various states with a representative cross section of groups:

November 12 Columbia, MO
November 13 Modesto, CA
November 14 Macon, GA

Six (6) were held in Washington, DC with specific groups:

November 19 Agricultural Media Group
November 19 Livestock Group
November 20 Fruits & Vegetables Group
November 20 Crops Group
November 21 Wildlife and Sportsman Groups
November 21 Environmental Groups

The composition of the groups were determined by the firm with assistance from NRCS. The firm facilitated the participants through a series of questions to solicit their feedback on key issues relevant to rulemaking for the new program.

The five SWCS workshops were held in the following locations:

November 12 Billings, Montana (Montana, Wyoming)
November 14 Fort Morgan, Colorado (Colorado, Wyoming)
November 21 Defiance, Ohio (Ohio, Michigan, Indiana)
December 3 Greenville, Mississippi (Mississippi, Arkansas, Louisiana)
December 11 Fresno, California (California)

Four NRCS field staff and 12 producers participated in each workshop. Producers were selected in an unbiased manner which assured that they were not exclusively conservation-oriented or farm program participants. Producers were interviewed to solicit their feedback on key issues relevant to rulemaking for the new program.

Key Issues for Comment

The results of these two projects coupled with analyses conducted by NRCS have identified several key issues in rulemaking that will have profound effects on the performance and effectiveness with which CSP can be used to meet the objectives of the statute. The SWCS workshops, for example, identified important opportunities to simultaneously streamline and enhance the conservation performance of CSP. The focus groups, on the other hand, felt it important to do the program ''right'' at the onset even if it meant slowing initial implementation; further the participants were concerned about flexibility and accountability. Both groups identified concerns about the potential budget implications of the program. One of the overarching issues identified was the tension between the demand for the program and the budget concerns.

NRCS is currently analyzing in detail the information gathered through the workshops and focus groups to inform its rulemaking in regard to the key issues raised in the workshops, focus groups, and agency analyses of alternatives. Given the importance of these issues to the performance and effectiveness of CSP, NRCS is seeking additional public comment. NRCS is specifically interested in receiving public input regarding how CSP can be used to meet the objectives of the statute on the following issues:

1. The law specifies that conservation security plans address one or more ''significant'' resource concerns. Resource concerns may be as general as soil erosion or water quality or as specific as soil erosion by water or ground water quality. Many concerns have no practical direct measurement techniques or tools. What criteria should be used to determine what is a resource concern and whether a resource concern is significant?

2. The law requires that NRCS establish minimum requirements for three tiers of conservation effort. The minimum could be as specific as a list of minimum practices or as general as bundling of conservation measures that achieve a desired resource outcome. What should be the minimum requirements for each tier? Should NRCS establish minimum requirements that apply to all contracts nationally? What could some of these requirements be?

3. The law requires NRCS to describe the particular practices to be implemented, maintained, or improved as part of the program. What criteria should be used to determine which practices and activities are eligible for payment under the program? Should specific practices or activities receive priority for payment under the program? To what extent should sets of practices and activities be accorded priority for payment under the program?

4. The law restricts the maximum base payment to a percentage of the total contract cap (*i.e.* 25 percent for Tier I and 30 percent for Tiers II and III). What should be the balance of the base payment, maintenance cost-share payment and enhancement payment to reward the steward and attain additional conservation benefits?

5. The law uses the extent of the agricultural operation covered by the contract as a primary distinction between Tiers I and II. Tier I covers the ''enrolled portion of the agricultural operation'', while Tiers II and III cover ''the entire agricultural operation.'' With the variety of ownership and landowner-tenant relationships which change over time across the country, how should ''agricultural operation'' be defined?

6. The law specifies the eligible land for payment purposes as cropland, grassland, prairie land, and rangeland as well as forestland that is an incidental part of the agricultural operation. Should noncropped areas, such as turn rows or riparian areas, that are part of the agriculture operation be included for conservation treatment? Should farmsteads, ranch sites, barnyards, feedlots, equipment storage, material-handling facilities, and other such developed areas be considered part of the ''agricultural operation''? What criteria should be used to determine those areas of a farm or ranch that might legitimately be excluded from the ''agricultural operation''?

7. The law specifies that NRCS make a base payment as part of a conservation security plan using either the 2001 national rental rate for a specific land use or another appropriate rate that assures regional equity. How should NRCS determine the base payment? If an alternative to the national rental rate is used, how should it be constructed? Should the payments be determined at the national, state or local levels?

8. The law provides for an enhanced payment if an owner or operator does one or more of the following: (a)

Implements or maintains practices that exceed minimum requirements; (b) addresses local conservation priorities; (c) participates in on-farm research, demonstration, or pilot projects; (d) participates in a watershed or regional resource conservation plan; or (e) carries out assessment and evaluation activities relating to practices included in a conservation security plan. Enhanced payments are meant to ensure and optimize environmental benefits. How should enhanced payments be determined and calculated?

9. The law does not limit the number of contracts held by a producer. Should there be a limitation on the total number of contracts a producer may have? If there is no limit on the number of contracts, should USDA set an individual payment limitation for producers with multiple contracts?

10. The law requires that the regulations provide for adequate safeguards to protect the interests of tenants and sharecroppers, including provisions for sharing payments, on a fair and equitable basis. Concerns have been raised over the impact of CSP provisions on owner/operator relationships including changes in rental rates or changes in operators. How can NRCS ensure that payments are shared on a fair and equitable basis?

11. The law requires a minimum contract length in CSP of five years. Many landlord-tenant relationships are short-term in nature, usually less than five years. Should the applicant be required to have control of the land for the complete CSP contract period? How should the program address the tension between the return to management versus the return to capital?

12. The law does not prescribe a funding or acreage cap for CSP. USDA estimates that there is a potential applicant pool of over two million farms and ranches covering over 900 million potential eligible acres. A primary implementation concern is the program scope. In order for this program to accomplish the Administration's goal of maximizing the conservation and improvement of natural resources, it is necessary to prioritize CSP assistance. The Department is seeking public comments on ways to focus and prioritize CSP assistance. For example, if the program would only fund the highest-priority applications, should there be an open application process with all applicants competing for a limited number of contracts? Should applications be constrained by resource concern, program funding, tier level, owner-operator relationship, geography or other constraint?

13. The law includes energy as a resource concern for CSP program purposes. The NRCS Field Office Technical Guide does not recognize energy as a natural resource concern and therefore no quality criteria or non-degradation standard exists to compare a conservation treatment against. NRCS is seeking comments on how energy use should be incorporated into the program requirements. How should the benefits be assessed?

14. The law includes payment for conservation practices described as requiring planning, implementation, management and maintenance. A concern was raised as to whether the payment would be, in fact, a return for equity in capital or for the engagement in intensive management. What should the program be paying for?

15.The law provides little guidance for monitoring quality assurance or specifics on identifying contract violations. The issue is two-fold in nature encompassing both the measurement of outcomes from a performance standpoint and assuring the Federal funds are spent wisely and that contracts are appropriately carried out. How should USDA ensure accountability?

NRCS will accept all other comments on general program implementation.

Regulatory Findings

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), USDA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this Advanced Notice of Proposed Rulemaking is a ''significant regulatory action'' in light of the provisions of paragraph (4) above as it raises novel legal or policy issues. As such, this action was submitted to OMB for review.

Signed in Washington, DC, on February 6, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service and Vice President, Commodity Credit Corporation.

[FR Doc. 03–3782 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–040–1]

RIN 0579–AB38

Importation of Milk and Milk Products From Regions Affected With Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of animal products to establish specific processing requirements for certain cheeses, butter, and butteroil imported from regions in which foot-and-mouth disease exists; these products are currently exempt from the requirements of the regulations. Additionally, we are proposing to require that those products, when imported from regions in which foot-and-mouth disease exists, be accompanied by government certification regarding the processing of the products. The proposed processing methods could also be used for other milk products that are currently eligible for importation under other conditions. We believe these actions are necessary to ensure that materials containing the foot-and-mouth disease virus are not imported into the United States.

DATES: We will consider all comments that we receive on or before April 21, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–040–1, 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. 01–040–1. If you use 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. 01–040–1'' on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Karen James-Preston, Assistant Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of meat and other animal products, including milk and milk products, in order to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of livestock.

FMD is a severe and highly contagious viral infection affecting cattle, deer, goats, sheep, swine, and other animals. The most effective means of eradicating FMD is by the slaughter of affected animals. FMD is endemic to more than two-thirds of the world and is considered to be widespread in parts of Africa, Asia, Europe, and South America. FMD occurs in over seven different serotypes and 60 subtypes. As FMD outbreaks have occurred in foreign regions, the United States has banned the importation of live ruminants and swine, and restricted the importation of many animal products, from countries affected by FMD. In the past few years, the United States has implemented prohibitions and restrictions in response to outbreaks in South America, the European Union, and Taiwan.

Although FMD was eradicated in the United States in 1929, the virus could be reintroduced by a single infected animal, animal product, or person carrying the virus. Once introduced, FMD can spread quickly through exposure to aerosols from infected animals, direct contact with infected animals, contact with contaminated feed or equipment, or contact with humans harboring the virus or carrying the virus on their clothing. It appears that FMD is primarily spread among livestock through aerosol, direct contact, or ingestion of animal products, including milk products. FMD could be introduced into the United States if milk or milk products carrying the FMD virus that have not been properly processed are imported into the United States and are ingested by ruminants or other livestock in the United States.

Current Regulations

Section 94.16 of the regulations contains provisions governing the importation of milk and milk products from FMD-affected countries. With certain exceptions, the current provisions in § 94.16 prohibit the importation of milk and milk products from regions in which FMD exists, unless the milk or milk product meets one of the conditions set forth in § 94.16(b). The products that are exempted from the importation conditions are butter, butteroil, and cheese, except cheese with liquid or containing any item prohibited or restricted from importation under the regulations unless such item is independently eligible for importation under part 94. Except for these exempted articles, milk and milk products may not be imported from any region designated in § 94.1(a)(1) as a region in which rinderpest or FMD exists unless the milk or milk products meet one of the following conditions:

1. They are in a concentrated liquid form and have been processed by heat by a commercial method in a container hermetically sealed promptly after filling but before such heating, so as to be shelf stable without refrigeration.

2. They are dry milk or dry milk products, including dry whole milk, nonfat dry milk, dried whey, dried buttermilk, and formulations that contain any such dry milk products, and are consigned directly to an approved establishment for further processing in a manner approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) as adequate to prevent the introduction or dissemination of livestock diseases into the United States. However, in specific cases, upon request by the importer to the Administrator, and approval by the Administrator, they may be stored for a temporary period in an approved warehouse under the supervision of an APHIS inspector pending movement to an approved establishment. Such products must be transported from the port of first arrival to an approved establishment or an approved warehouse, and from an approved warehouse to an approved establishment only under Department seals or seals of the U.S. Customs Service. Such seals may be broken only by an APHIS inspector or other person authorized to do so by the Administrator. Such products may not be removed from the approved warehouse or approved establishment unless the Administrator gives special permission and all the conditions and requirements specified by the Administrator are complied with.

3. Milk and milk products not exempted from the importation conditions and not meeting conditions 1 or 2 above may be imported if the importer first applies for and receives written permission from the Administrator authorizing such importation. Permission will be granted only when the Administrator determines that such action will not endanger the health of the livestock of the United States. Products subject to this provision include, but are not limited to, condensed milk, long-life milks such as sterilized milk, casein and caseinates, lactose, and lactalbumin. Additionally, small amounts of milk and milk products that would otherwise be prohibited from being imported into the United States may, in specific cases, be imported for examination, testing, or analysis if such importation is approved by the Administrator.

In light of recent FMD outbreaks in the European Union, South America, and elsewhere, we have reviewed the scientific literature and have determined that permitting the importation into the United States of butter, butteroil, and certain cheeses without their meeting specific importation conditions could pose an unacceptable risk of introducing the FMD virus into the United States. The literature we reviewed [1] indicates that

[1] *See:* Blackwell, J.H., ''Survival of Foot-and-Mouth Disease Virus in Cheese,'' 1976, Journal of Dairy Science, Vol. 59, No. 9, pp. 1574–1579.

Sellers, R.F., ''Inactivation of Foot-and-Mouth Disease Virus in Milk,'' 1969, British Veterinary Journal, Vol. 125, No. 4, pp. 163–168.

Continued

the FMD virus could survive in those exempted products, so we believe that it is necessary to provide specific processing requirements for these products as a condition of their importation. These proposed processing methods are consistent with the Office International des Epizooties (OIE) standards. We are, therefore, proposing to remove the exemptions from importation conditions for the milk products listed in § 94.16(a) and instead would provide specific conditions (*i.e.*, processing methods) under which those products could be imported. These processing methods could also be used for other products that are already eligible for importation under the conditions in § 94.16, including, but not limited to, condensed milk, long-life milks such as sterilized milk, cream, cheeses, whey, casein and caseinates.

Under this proposed rule, the milk products now listed as exempt in § 94.16(a) could be imported into the United States from a region affected with FMD only if they have been produced using one of the processing methods described below:

1. Milk or milk products (other than cheese) that are, or are made from, milk that has been treated at ultra-high temperature (UHT)(298.4 °F (148 °C) for 3 seconds or 284 °F (140 °C) for 5 seconds).

2. Milk or milk products (other than cheese) that are, or are made from, milk that has been treated at a high temperature for a short time (HTST) (161.6 °F (72 °C) for 15 seconds), followed by a second HTST treatment. For milk products made with added fat or added concentrates, the treatment temperature would have to be increased to 167 °F (75 °C).

3. Milk products made from milk that is HTST-treated then brought to a pH of less than 6 for 1 hour.

4. Cheese made from raw milk, aged at a temperature of greater than 35.6 of (2 °C) with a pH of less than 6 for 120 days prior to export from the country of origin.

5. Cheese made from HTST milk, aged at a temperature of greater than 35.6 of (2 °C) with a pH of less than 6 for 30 days prior to export from the country of origin.

The scientific evidence available to us indicates that each of the methods described above is sufficient to inactivate the FMD virus in milk and milk products.

We would also require that any milk or milk product imported under these proposed conditions (*i.e.*, the butter, butteroil, and cheeses that would have to meet one of those conditions, as well as any other milk or milk product for which one of those methods was used as an alternative to meeting the existing importation conditions in § 94.16) be accompanied by an official veterinary certificate endorsed by a full-time, salaried veterinarian employed by the region of origin attesting to the completion of the appropriate processing. The certificate would help ensure that the required processing has been performed by requiring that a representative responsible for animal health in the exporting region verifies that the treatment has been carried out.

Additional Changes

We are proposing to add ice cream and chocolate milk to the examples of milk products in current § 94.16 (b)(3) that may be eligible for importation based on written permission from the Administrator. We are proposing to specifically cite ice cream and chocolate milk as products requiring written permission to minimize the chance that these products may accidentally be diverted into the animal food chain.

We are also proposing to require that the examination, testing, and analysis of small amounts of milk and milk products allowed for importation under current § 94.16(b)(4) occur in a laboratory setting. This action would ensure that untreated samples would not enter the United States to be sold at trade shows or fairs.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the office of Management and Budget.

We are proposing to amend the regulations regarding the importation of animal products to establish specific processing requirements for certain cheeses, butter, and butteroil imported from regions in which FMD exists. Those processing methods could also be used for other milk and milk products that are already eligible for importation under different conditions, thus allowing their importation under a greater variety of conditions. Additionally, we are proposing to require that products imported from regions in which FMD exists and processed using one of the proposed methods be accompanied by government certification regarding their processing. We believe these actions are necessary to ensure that products containing the FMD virus are not imported into the United States.

The establishment of FMD in the United States could result in serious economic consequences, given the size of the Nation's livestock inventories and the volume of animal and animal product sales. Potential losses associated with an outbreak of FMD include production losses at affected establishments, eradication and quarantine costs, and trade restrictions.[2] Production losses arise from lost production on depopulated premises and in the industries linked to the livestock sector. There would also be additional costs to be borne by producers and slaughterers, as restrictions would be imposed to prevent the spread of FMD and eradicate the disease within the United States. These restrictions and eradication measures would also mean added costs to the government for implementation and enforcement.

FMD outbreaks in the spring of 2001 in the United Kingdom illustrate these costs. Control of FMD in the United Kingdom became a nationwide undertaking, with restrictions on the movement of animals (and people), large-scale slaughter of animals on affected and neighboring farms, and disposal of carcasses through burning, rendering, or burial. The last case of FMD in the United Kingdom was found on September 30, 2001; by the time the United Kingdom declared the outbreak eradicated on January 14, 2002, 586,551 cattle, 3,466,493 sheep, 148,388 pigs, 2,482 goats, 1,021 deer, and 770 other animals had been slaughtered.[3] In addition, the European Union banned the export of meat, livestock, and milk products from the United Kingdom. As is shown below, the United States is a major exporter of products whose international movement could be affected by an outbreak of FMD in the United States. In addition to a likely reduction in demand from international consumers, trading partners of the United States would likely impose restrictions on, and reduce imports of, U.S. ruminants, swine, and some of their products in the event of an FMD outbreak in the United States.

According to ''Agricultural Statistics 2001,'' published by National Agricultural Statistics Service (NASS), cattle in U.S. herds in 2000 were valued at $67.1 billion, with 1999 cash receipts

Cunliffe, H.R., *et al.*, ''Inactivation of Milkborn Foot- and Mouth Disease Virus at Ultra-High Temperatures,'' 1979, Journal of Food Protection, Vol. 42, No. 2, pp. 135–137.

[2] Ekboir, Javier M., ''Potential Impact of Foot-and-Mouth Disease in California,'' 1999, Agricultural Issues Center, Division of Agriculture and Natural Resource, University of California.

[3] UK Department for Environment, Food & Rural Affairs.

of $36.5 billion from the sale of cattle, calves, beef, and veal. Cash receipts from the sale of milk and cream in 1999 reached $23.2 billion. U.S. hogs and pigs in 2000 were valued at $4.6 billion, with 1999 cash receipts from the sale of hogs, pork, and lard totaling $8.6 billion. Sheep and lamb inventories in 2000 were valued at $668.8 million, with 1999 cash receipts of $468.8 million from the sale of live sheep and lambs and of mutton and lamb. The value of U.S. wool production in 1999 totaled about $17.9 million.

U.S. exports of live bovines, swine, sheep, and goats were valued at $304.5 million in 2000. U.S. exports of fresh beef, pork, and sheep and goat meat totaled $4.4 billion in 2000. U.S. exports of fresh ruminant and swine products other than meat were valued at $718.4 million in 2000. U.S. exports of prepared and preserved ruminant and swine meat products such as sausages and cured, salted, and dried meats were valued at $375.5 million in 2000. U.S. exports of dairy products totaled $784.1 million in 2000. In addition, the United States exports a great number of other ruminant and swine products including germplasm, hides and skins, animal feeds, dairy products, bones, hair, guts, and glands.

In order to help prevent an outbreak of FMD in the United States, and thus protect the substantial domestic and export market described above, imports of certain cheeses, butter, and butteroil from regions affected with FMD would be subject to specific processing requirements as a result of this proposed rule. Other products, including milk, cream, casein, whey, caseinates, and ice cream, which are already eligible for importation under different conditions, could also be processed using the proposed methods as an alternative to meeting the existing requirements governing the importation of those products. Those products, as previously discussed, would need to be accompanied by an official veterinary certificate that attests to the completion of the appropriate processing. U.S. imports of these products in 2000 from regions affected with FMD and the world are shown in Table 1.

TABLE 1.—U.S. IMPORTS OF MILK AND MILK PRODUCTS, 2000

Product imported	From FMD affected regions (in millions)	From FMD free regions (in millions)	U.S. global imports (in millions)
Milk and cream, not concentrated	$0.73	$9.65	$10.38
Milk and cream, concentrated or sweetened	2.78	31.51	34.29
Butter and other fats and oils derived from milk	0.65	34.44	35.09
Cheese and curd	140.53	556.10	696.63
Ice cream	2.38	15.25	17.62
Casein and caseinates	98.81	401.57	500.38
Other milk products	15.25	157.06	172.31

Source: World Trade Atlas, Global Trade Information Services, Inc.

Approximately 9 percent of these imports were from regions affected with FMD. Information on the portion of butter, butteroil, and cheese imports from FMD-affected regions that do not currently meet the proposed requirements is not available. However, the impact of the proposed changes is expected to be small. Imports in total are small relative to domestic production. For example, butter imports totaled 18,059 metric tons in 1999, while domestic production of butter was 578,349 metric tons. In addition, APHIS anticipates that the majority of these imports currently meet, or could relatively easily be made to meet, the requirements described in this proposed rule, as most processors already possess and use the equipment necessary to meet the proposed standards. In addition, certain products (*i.e.,* dry milk and dry milk products including dry whole milk, nonfat dry milk, dried whey, dried buttermilk, and formulations which contain any such dry milk products) would continue to be eligible for importation under existing regulations and would not be required to meet the specific proposed requirements.

For most types of cheese imported into the United States, this proposed rule should have little impact. At a total of 197,537 metric tons in 1999, the amount of imported cheese was equal to about 5 percent of domestic cheese production, which was about 3.6 million metric tons. In addition, most U.S. imports of cheese currently meet or should be able to meet the requirements for time, temperature, and pH level in this proposed rule. There are notable possible exceptions to this. The aging requirement in the proposed rule may affect the importation of some cheeses, as additional aging may alter the character of some cheeses made with raw milk and some cheeses with eye-formation such as Swiss cheese, thus making them less desirable or unavailable for importation. In 1999, the United States produced about 100,000 metric tons, and imported more than 34,000 metric tons, of Swiss cheese. Table 2 shows U.S. imports of Swiss type cheeses and their origin in 1998 through 2000. The extent to which imports of Swiss cheese and raw milk cheese may be altered as a result of the proposed rule is unknown. However, the effect should be exceedingly small, as more than 99 percent of U.S. Swiss cheese imports in 2000 originated in FMD-free countries.

TABLE 2.—U.S. IMPORTS OF SWISS CHEESE

[in metric tons]

Country of origin	1998	1999	2000
Austria	1,269	1,109	1,298
Canada	346	369	183
Denmark	1,428	3,417	2,585
Finland	5,872	6,908	8,124
France	1,371	984	1,390

TABLE 2.—U.S. IMPORTS OF SWISS CHEESE—Continued

[in metric tons]

Country of origin	1998	1999	2000
Germany	3,858	6,477	4,633
Hungary	790	792	357
Ireland	1,021	1,124	818
Netherlands	374	424	213
Norway	7,510	7,254	7,709
Switzerland	3,416	3,516	3,498
Other countries	1,773	2,816	3,082

In addition to the specific processing requirements for butter, butteroil, and certain cheeses imported from regions affected by FMD, this proposed rule would also require government certification that those requirements have been met. The cost of obtaining certification may affect the price of the product paid by U.S. importers and end users. However, the cost of obtaining such certification is expected to be low. The certification is simply a signed statement from the veterinary official of the exporting country attesting that the requirements have been met. Certification would be a new requirement for cheese (without liquid or restricted items), butter, and butteroil. Under the current regulations, these items may enter without restriction. In 2000, about 40 percent of the $530 million in milk and milk products imported from FMD-affected countries were cheese and butter.

For some other imports, the proposed rule would expand import options. For example, certain products such as condensed milk, long-life milks such as sterilized milk, casein and caseinates, lactose and lactalbumin, are currently allowed entry if written permission is given for their importation, and other products such as dry milk or dry milk products are currently allowed entry only if consigned to an approved facility for further processing. If any of these products were produced using milk processed in accordance with methods described in this proposal, those products would be eligible for importation if accompanied by the certification described in the previous paragraph. The number of producers in FMD-affected regions that might opt to use the processing methods described in this proposed rule for these products is unknown. We expect that those producers would use UHT-or HTST-treated milk in the preparation of their products if that option was viable from a production standpoint and was an economically attractive alternative to the existing requirements in § 94.16 governing the importation of these products.

The quantity of imports from FMD-affected regions that might be produced using milk treated in accordance with this proposed rule is not known, nor is the degree to which that treatment might affect the cost of those imports.

As this proposed rule would simply provide an alternative to the current importation provisions for milk and milk products other than butter, butteroil, and cheese, we expect that the effect of this proposed rule on imports of those products, which in 2000 constituted about 60 percent of milk and milk product imports from FMD-affected regions, would be small.

Cost/Benefit Analysis

This proposed rule may involve added costs for importers and users of butter, butteroil, and certain cheeses, as those imports from FMD-affected regions would be required to meet new processing and certification requirements. However, because FMD-affected regions account for a small portion of all U.S. imports of these products and represent an even smaller fraction of domestic production and overall supply, the impacts on domestic prices and consumption will be small. Moreover, these costs are very small when compared to the benefits of preventing an outbreak of FMD in the United States. Such an outbreak could have serious economic consequences given the size of the nation's livestock inventories and the volume of animal and animal product sales.

Impact on Small Entities

The Regulatory Flexibility Act requires that Agencies specifically consider the economic impact of their rules on small entities. Those entities most likely to be affected by the proposed rule are domestic importers of milk and milk products, domestic users of these products, and dairy farms.

The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small entities under the Regulatory Flexibility Act. According to North American Industry Classification System (NAICS) codes 422430 and 422490, import/export merchants, agents, and brokers are identified in the wholesaling trade. A firm engaged in wholesaling dairy products is considered small if it employs fewer than 100 persons. In 1997, more than 97 percent (2,460 of 2,522) of dairy products (except dried or canned) wholesalers would be considered small, and more than 95 percent (12,251 of 12,845) of other grocery and related products wholesalers, which includes dried and canned dairy products, would be considered small.[4] An establishment engaged in dairy cattle and milk production (NAICS code 112111) is considered small if it has annual sales of less than $750,000. According to the 1997 Census of Agriculture, at least 79,155 of 86,022 (or 92 percent) of dairy farms would be considered small. The size standards for establishments engaged in food manufacturing range from fewer than 500 employees to fewer than 1,000 employees, depending on the type of food being manufactured. An establishment engaged in dairy product manufacturing (NAICS code 3115) is considered small if it employs fewer than 500 persons. This is also the standard for non-chocolate confectionary manufacturing, NAICS code 311340, which includes granola and other types of breakfast bars. In 1997, 25,729 of 26,302 (or more than 97 percent) of food manufacturing establishments would be considered small.[5]

From the above it is clear that any domestic entity affected by this proposed rule is likely to be considered small. However, for most milk products, the quantity imported is a small fraction of that produced domestically, and the quantity of imports supplied by FMD-affected regions is a smaller percentage still of domestic supply. Thus, the

[4] 1997 Economic Census, Department of Commerce, Bureau of the Census.

[5] 1997 Economic Census, Department of Commerce, Bureau of the Census.

impact of this proposed rule on small entities is expected to be small.

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 01–040–1. Please send a copy of your comments to: (1) Docket No. 01–040–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the regulations regarding the importation of animal products to establish new processing requirements for butter, butteroil, and certain cheeses imported from regions in which FMD exists. Additionally, we are proposing to require that those materials, as well as other milk or milk products that are processed using the new proposed methods in lieu of meeting the existing importation conditions, when imported from regions in which foot-and-mouth disease exists, be accompanied by government certification by a salaried veterinarian employed by the region of origin regarding the processing of the materials.

We are asking OMB to approve, for 3 years, our use of this information collection activity in connection with our efforts to ensure that milk and milk products imported into the United States from FMD regions do not harbor the FMD virus.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed 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 (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Exporters of milk and milk products in FMD regions; full-time, salaried veterinarians employed by the region of origin.

Estimated annual number of respondents: 200.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 1,000.

Estimated total annual burden on respondents: 250 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.) Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. Section 94.16 would be amended as follows:

a. By removing paragraph (a) and redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

b. In newly redesignated paragraph (a), by revising the introductory text of the paragraph; redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(6) through (a)(9), respectively; and by adding new paragraphs (a)(1) through(a)(5) to read as follows.

c. In newly redesignated paragraph (a)(8), by revising the first sentence to read as follows, and in the last sentence, by adding the words ''ice cream, chocolate milk,'' after the word ''lactose''.

d. In newly redesignated paragraph (a)(9), by adding the words ''in a laboratory setting'' after the word ''analysis''.

e. In newly redesignated paragraph (c), in the last sentence, by removing the citation § 94.16(b)(3)'' and adding the words ''paragraph (a)(8) of this section'' in its place.

§ 94.16 Milk and milk products.

(a) Milk and milk products originating in, or shipped from, any region designated in § 94.1(a) as a region infected with rinderpest or foot-and-mouth disease may be imported into the United States if the milk or milk product satisfies one of the sets of criteria described in paragraphs (a)(1) through (a)(9) of this section. Products processed in accordance with one of the methods described in paragraphs (a)(1) through (a)(5) of this section must be accompanied by an official veterinary

certificate endorsed by a full-time, salaried veterinarian employed by the region of origin stating that the products have been processed in accordance with one of those methods:

(1) Milk or milk products (other than cheese) that are, or are made from, milk that has been treated at an ultra high temperature (298.4 °F (148 °C) for 3 seconds or 284 °F (140 °C) for 5 seconds); or

(2) Milk or milk products (other than cheese) that are, or are made from, milk that has been treated at a high temperature for a short time (HTST) (161.6 °F (72 °C) for 15 seconds) followed by a second HTST (161.6 °F (72 °C) for 15 seconds) treatment. For milk products made with added fat or added concentrates, the treatment temperature must be increased to 167 °F (75 °C); or

(3) Milk products made from HTST milk that is brought to a pH of less than 6 for 1 hour.

(4) Cheese made from raw milk, aged at a temperature of greater than 35.6 °F (2 °C) with a pH of less than 6 for 120 days prior to export from the country of origin; or

(5) Cheese made from HTST milk, aged at a temperature of greater than 35.6 °F (2 °C) with a pH of less than 6 for 30 days prior to export from the country of origin.

* * * * *

(8) Milk and milk products not of classes included within the provisions of paragraphs (a)(1) through (a)(7) of this section may be imported if the importer first applies to and receives written permission from the Administrator, authorizing such importation. * * *

* * * * *

Done in Washington, DC, this 11th day of February, 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–3836 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[NOTICE 2003—5]

Leadership PACs

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on proposed rules to address leadership PACs, which are unauthorized committees that are associated with a Federal candidate or officeholder. Further information is provided in the supplementary information that follows.

DATES: The hearing will be held at 9:30 a.m. on Wednesday, February 26, 2003. The Commission is no longer accepting requests to testify.

ADDRESSES: Commission hearings are held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 26, 2002, the Commission published a Notice of Proposed Rulemaking [''NPRM''] proposing three alternative sets of rules addressing political committees that are associated with a Federal candidate or officeholder, and potential limitations to the contributions that such committees may accept and make. 67 FR 78753 (Dec. 26, 2002). The comment period for the NPRM ended on January 31, 2003. Eight sets of comments were received by the Commission in response to the NPRM. Seven commenters, who submitted six of the sets of comments, requested to testify at a public hearing if one is held.

After considering these requests and the other comments received to date in response to the NPRM, the Commission believes a public hearing would be helpful in considering the issues raised in the rulemaking. As the Commission stated in the NPRM, the hearing will be held at 9:30 a.m. on February 26, 2003.

Dated: February 11, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–3834 Filed 2–14–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR PART 1301

[DEA–232P]

RIN 1117–AA70

Controlled Substances Registration and Reregistration Application Fees

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: DEA is proposing to adjust the current fee schedule for DEA controlled substances registration to adequately recover necessary costs associated with the Diversion Control Program as mandated by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993.

DATES: Written comments must be submitted on or before April 21, 2003.

ADDRESSES: Written comments should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/CCR.

FOR FURTHER INFORMATION, CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102–395) requires that the Drug Enforcement Administration (DEA) collect fees to ensure the recovery of the full costs of operating the Diversion Control Program. Section 111(b)(3) of the act, codified at 21 U.S.C. 886a(3), requires that ''fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program.'' Section 111(b)(1) of the act also requires that ''there shall be deposited as offsetting receipts into that account all fees collected by the Drug Enforcement Administration, in excess of $15,000,000, for the operation of its diversion control program.''

Since 1970 the Controlled Substances Act (CSA) has authorized the Attorney General to ''charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances.'' 21 U.S.C. 821 and 958(f). This fee is collected by the Deputy Administrator of DEA for the Attorney General and is the only fee collected by DEA to support the Diversion Control Program. DEA does collect a user fee to support its listed chemical activities. However, this fee does not fall within the scope of this notice (see below for a further discussion). The fee schedule for the CSA was established in 1971 and was adjusted in 1984 and again in 1993. The fees have remained unchanged since that time.

Following publication in the **Federal Register** of the fee adjustment in 1993, the American Medical Association (AMA) and others filed a complaint in the United States District Court for the District of Columbia objecting to the new fees. The district court issued its final order granting the government's motion for summary judgment and disposing of all claims on July 5, 1994. *AMA* v. *Reno,* 857 F. Supp. 80 (D.D.C. 1994). The AMA appealed, and on July 27, 1995 the United States Court of Appeals for the District of Columbia Circuit remanded, without vacating, the rule to DEA. Specifically, the court required DEA ''to identify the components of the fee-funded diversion control program and provide a brief explanation of why it deemed each component to be a part of that program.'' *AMA* v. *Reno,* 57 F.3d 1129, 1135 (D.C. Cir. 1995).

DEA responded to the remand requirement through a notice in the **Federal Register** on December 30, 1996, describing the fee-funded components and activities of the DCP with an explanation of how each satisfies the statutory requirements for fee-funding. 61 FR 68624–32. DEA accepted comments on this final rule and, based on these comments, published its final rule on the Drug Diversion Control Fee Account (DDCFA) in the **Federal Register** on August 9, 2002. This rule contains information on the Specific DCP activities funded by the DDCFA. Copies of both the December 30, 1996 and August 9, 2002 rulemakings may be found on the Diversion Control Program Web site: *http://www.deadiversion.usdoj.gov.*

This announcement establishes the fee structure under the existing registration system to fully support the operations of the Diversion Control Program for Fiscal Year 2004 through Fiscal Year 2006. Since the last published rule in 1993, the Diversion Control Program has experienced significant growth without any associated increase in registrant fees to support the growth and increased funding needs. DEA is required by law (see below) to collect the full costs of the Diversion Control Program. The amount to be recovered is established by the Congressional appropriations process. The projected amount required to be recovered for Fiscal Year 2004, based on the President's Budget Request, will be $133.6 million; the estimated amount required to be recovered for Fiscal Year 2005 will be $157.3 million. The estimated amount required to be recovered for Fiscal Year 2006 will be $160.3 million. These figures include required program growth and the mandatory annual $15 million transfer to the U.S. Treasury.

Statutory Authority to Collect Fees

DEA's authority to collect registration fees derives from three statutory provisions. DEA is authorized by 21 U.S.C. 821 to collect ''reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances and to the registration and control of regulated persons and of regulated transactions.'' Secondly, 21 U.S.C. 958(f) permits DEA to collect ''reasonable fees relating to the registration of importers and exporters of controlled substances or List I chemicals.'' Lastly, the 1993 Appropriations Act added a provision requiring DEA to set a fee schedule ''that ensures the recovery of the full costs of operating the various aspects of that program.'' 21 U.S.C. 886a(3). The United States Court of Appeals for the District of Columbia Circuit noted that in establishing the DDCFA, Congress left intact the fee collection requirements of 21 U.S.C. 821, confirming boundaries of the DCP that DEA can fund by registration fees. *AMA* v. *Reno,* 57 F.3d 1129, 1135 (D.C. Cir. 1995). Although the court made no specific mention of 21 U.S.C. 958(f), those same boundaries remain intact as well. The court found that the current statutory scheme thus requires DEA to set registration fees to recover the full costs of the DCP, while requiring DEA to charge ''reasonable'' fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances and the registration and control of regulated persons and of regulated transactions.

DEA, therefore, must examine DCP activities in conjunction with the nexus requirements of 21 U.S.C. 821 and 958(f) to determine whether it can properly fee-fund them while setting fees that recover the full cost of these activities.

Diversion Control Program and Responsibilities

DEA's mission with respect to licit controlled pharmaceuticals is to prevent, detect and eliminate the diversion of controlled pharmaceuticals from legitimate channels to illegal use, while at the same time ensuring their availability for legitimate medical and scientific purposes. To facilitate these goals, Congress, through the CSA, established a closed system of controlled substance distribution encompassing manufacturers, distributors, pharmacies and practitioners; that is, within this closed system a controlled substance can be traced from the time it is manufactured to the time it is dispensed to the ultimate user. This system has proven effective in reducing the diversion of these substances from legitimate channels to the illicit market. Components of this closed system include scheduling of all controlled substances, registration of all controlled substance handlers, recordkeeping for accountability, security, and manufacturing quotas, all under DEA DCP oversight. (The DCP also possesses similar chemical control responsibilities pursuant to the Chemical Diversion and Trafficking Act (CDTA) and subsequent legislation.)

The plain language of the 1993 Appropriations Act requires DEA to set and collect registration fees to cover the full costs of operating its Diversion Control Program. In its 1993 final rule publication setting new registration fees, DEA examined all activities that relate to the registration and control of the manufacture, distribution and dispensing of controlled substances and to the registration (and control) of importers and exporters. DEA determined that ''activities contained in the [diversion] program which give rise to the fees consist of diversion investigators, analysts, technicians, and clerical personnel salaries and expenses; and travel, rent, utilities, supplies, equipment and services associated with these positions for the registration and control of the manufacture, distribution and dispensing of controlled substances.'' 58 FR 15273. DEA determined that it would not fee-fund costs associated with chemical control efforts (see below), clandestine laboratory efforts, overseas staff (specifically diversion investigators assigned to foreign posts), DEA's Office of Chief Counsel or executive direction. 58 FR 15273. DEA concluded that these activities were excluded from the Attorney General's budget delineation for the category of ''Diversion Control'' and thus not included in the determination of the fees. *Id.*

At the time this initial rule was published on March 22, 1993, 21 U.S.C. 821 did not extend to chemical control activities (''regulated transactions''). Accordingly, there were no registration or fee requirements for handlers of List I chemicals, and chemical control activities were not included among those to be supported by the DDCFA. Congress amended 21 U.S.C. 821 on December 17, 1993 to require reasonable fees relating to ''the registration and control of regulated persons and of regulated transactions.'' Domestic Chemical Diversion Control Act of 1993, 3(a), Pub. L. 103–200, 107 Stat. 2333.

Despite this amendment, to date DEA's chemical control activities have continued to be supported by appropriated funds and not by the DDCFA.

In its December 1996 **Federal Register** notice, DEA further excluded from fee-funding those activities that incidentally support the DCP but are funded elsewhere in the DEA Salaries Budget (and thus not fee-funded). Specific examples listed in the notice include ''support provided by the Attorneys in DEA's office of Chief Counsel Division Regulatory Section; certain laboratory service support; DEA Automated Data Processing Systems support (except ARCOS and CSA); Office of Training staff; DEA Management and Administrative Support; Office of Congressional and Public Affairs; Intelligence Support and Diversion Investigators assigned overseas.'' 61 FR 68631.

In summary, to date fee-fundable DCP activities have included: scheduling, registration, investigation, inspection, data collection and analysis, training, establishing production quotas, cooperative efforts with state, local and other federal agencies, cooperative efforts with the regulated industry, international activities relating to the registration and control of the manufacture, distribution and dispensing of controlled substances, and attendant management, personnel, administrative and clerical oversight for the DCP because they too relate to the fee-funding criteria of 21 U.S.C. 821 and 958(f). Fee-fundable activities also have included travel, rent, utilities, supplies, equipment and services associated with the above-listed activities. Fee-fundable activities also have included activities related to the control of licit controlled substances in the United States in which the initial source is foreign. For example, smuggling a controlled substance into or introducing it into the United States is importation, albeit illegal, and constitutes an activity for which DEA registration and controls are required under the CSA and its implementing regulations; therefore activities to prevent smuggling fall under the purview of the DCP. Foreign-source substances potentially threaten the integrity of the closed system of distribution and undermine other diversion control efforts by DEA. They also may pose a public health threat and/or unlawful competition to legal, registered U.S. manufacturers and suppliers. The advance of the Internet in particular has made foreign-source substances more accessible in the United States and the diversion of these substances a greater problem. The DCP now will address the activities that will be funded by the DDCFA as part of its programmatic responsibilities.

A more detailed description of the activities funded through the DDCFA is included in DEA's 1996 final rule (61 FR 68631) and amended final rule published on August 9, 2002 (67 FR 51988).

Current Fee-Funding

Since the last published rule in 1993, the Budget Authority for the Diversion Control Program has doubled without any associated increase in registrant fees. Currently, the fees established in 1993 are no longer adequate to recover the ''full costs'' of operating the DCP as required by law.

The Congressional appropriation for the DCP for Fiscal Year 1994 was $57.1 million. For Fiscal Year 2004, the expected Budget Authority will be $118,561,000 (this figure does not include the mandatory $15 million transfer to the U.S. Treasury). The growth in the DCP has been driven by a number of factors some of which have been reflected in DEA budget submissions such as the creation of Tactical Diversion Squads in Fiscal Year 1997. Other DCP expansions include DEA's response to the diversion of OxyContin®, involving the opening of 247 cases from October 1999 through March 2002 (including 159 cases in Fiscal Year 2001 alone, a 270 percent increase from Fiscal Year 2000). These cases have led to a total of 328 arrests. DEA is also expending increasing time and resources on implementing its initial response to internet-based drug diversion, for which it has opened a number of cases leading to arrests and convictions. DEA has also seen an increase in the number of drug diversion cases leading to arrests. (The number of diversion arrests more than doubled in just five years, from 444 arrests in Fiscal Year 1995 to 941 diversion arrests relating to drug cases alone in Fiscal Year 2000. DEA made 871 diversion arrests relating to drug cases in Fiscal Year 2001, and 341 arrests in the first six months of Fiscal Year 2002. The slight decrease in arrests in Fiscal Year 2001 and the first half of Fiscal Year 2002 is attributable to a greater emphasis on chemical investigative activities.) These additional programmatic needs and responsibilities have required additional investigators, headquarters staff and increased financial resources to support these staff and their efforts to prevent the diversion of licit controlled substances

The following table shows the annual growth in Budget Authority for the DCP from Fiscal Year 1994 through Fiscal Year 2006 (expected Budget Authority for FY03 and estimated Budget Authority for FY04, FY05, and FY06). The Budget Authority is based on the President's Budget Request. Note, these figures do not include the required annual $15 million transfer to the U.S. Treasury.

Fiscal year	Budget authority (In millions)
FY94	$57.1
FY95	58.4
FY96	62.2
FY97	67.8
FY98	73.2
FY99	76.7
FY00	80.3
FY01	83.5
FY02	86.2
FY03 (est)	89
FY04 (est.)	118.6
FY05 (est.)	142.3
FY06 (est.)	145.3

In reviewing the activities currently supported by the DDCFA and the relevant legislation and regulatory actions governing the DCP and fee funding, DEA identified several elements of DEA operations that, though not part of the DCP, incidentally support the activities of the DCP and which to date have been funded through Congressional appropriations rather than through the DDCFA. Examples of such elements include two sections within the Office of Chief Counsel that (a) litigate administrative actions related to DEA registrants and (b) provide legal support on regulatory policy matters; a section within the Office of Training that is specifically dedicated to the DCP; a portion of the Office of Forensic Sciences Special Testing Laboratory that supports authentic sample analyses for licit drugs; and a portion of the budget for DEA's agency-wide computer network, ''Firebird'', related to the work of the DCP. As was discussed more fully in previous rulemakings regarding the DDCFA, while these elements incidentally support diversion control efforts, because their overall function is not primarily devoted to diversion control, they have been included elsewhere in the DEA budget and not as part of fee-fundable activities. In the absence of specific guidance in the 1993 Appropriations Act as to which activities were encompassed within the DCP and thus fee-fundable, DEA has followed the plain language of the act and used the budget categories that had historically been included in the DCP budget request of the Attorney General. As described in DEA's 1996 **Federal Register** notice, for the purposes of

budget formulation and appropriation, DEA historically has identified only those resources (with their overhead costs) that were specifically devoted to diversion control efforts as part of the DCP in its annual budget submission to Congress. Other resources which support a broad range of DEA activities, including diversion control, therefore have been included in the budget formulation and appropriation process and not funded through the DDCFA. 61 FR 68631. At this time these activities will continue to be funded through appropriated funds as DEA considers how to better comply with the applicable laws in the future.

Development of the New Fee Schedule

DEA set the current fee schedule for the Diversion Control Program (DCP) through publication in the **Federal Register** on March 22, 1993. This announcement outlined the general categories of cost to be borne by the resulting Drug Diversion Control Fee Account (DDCFA) and delineated the fee categories indicated below:

Registrant class	Annual cost
Manufacturers	$875
Distributors, Importers/Exporters	438
Dispensers/Practitioners	70
Researchers, Narcotic Treatment Programs	70

Since this announcement, the fees, which as required by law support the full cost of the Diversion Control Program, have not changed despite growth in the program and additional costs borne by the program (see the previous section). To recover the full costs of the DCP as required by law, DEA plans to incrementally raise the fees in accordance with its existing fee structure as follows:

Registrant class	Annual cost
Manufacturers	$1,605
Distributors, Importers/Exporters	804
Dispensers/Practitioners	131
Researchers, Narcotic Treatment Programs	131

These increases in fees will go into effect 30 days after the publication of the final rule.

The determination of fees for the Fiscal Year 2004–2006 period covered by this notice is based on the expected Budget Authority for Fiscal Year 2004 (based on the President's Budget Request) and the estimated budget request and appropriation for each subsequent year plus the annual $15 million transfer to the U.S. Treasury. In addition to covering with fee funds all program elements and activities related to the registration and control of the manufacture, distribution and dispensing of controlled substances, DEA must transfer the first $15 million of fee revenue to the General Fund of the Treasury each year. 21 U.S.C. 886a(1). For each fiscal year between Fiscal Year 1993 through Fiscal Year 1998, Congress appropriated an additional $15 million to offset this requirement (a total infusion to the DDCFA of $90 million). However, beginning in Fiscal Year 1999, Congress discontinued this additional appropriation.

The expected Budget Authority for Fiscal Year 2004 is $118,561,000, which accounts for increases in program costs due to inflation, increases in federal staff salaries, and additional funds to undertake a number of new initiatives to prevent, detect and eliminate the diversion of controlled substances while ensuring an adequate supply for legitimate medical and scientific purposes. Funds include $12,518,000 for diversion investigation (for 93 positions), including OxyContin® diversion control and implementation of a system to detect Internet sites that may divert controlled substances and investigation of those sites, as warranted. This will permit DEA to conduct additional and more complex investigations into the diversion of pharmaceutical controlled substances. Other funds accounted for include $12,098,000 (for 40 positions) to develop a system to permit the electronic transmission of controlled substances prescriptions from prescriber to pharmacy and to develop an electronic order form for Schedule I and II controlled substances. These electronic alternatives will provide a similar or higher degree of security/integrity than current paper-based systems and will help DEA to meet its legal mandates under the Government Paperwork Elimination Act. The total cost of program enhancements for Fiscal Year 2004 is $24,873,000. Including the mandatory transfer to Treasury of $15 million, the total amount required to be recovered for Fiscal Year 2004 is $133,561,000.

The anticipated President's Budget Request for Fiscal Year 2005 is $142,265,000. This figure accounts for increases in program costs due to inflation (including such items as postage rate increase, increases in cost of employee health benefits, increases in GSA rent, etc.), costs of federal staff pay increases, and an additional $20,578,000 (for 39 positions). This figure includes costs to support the systems to permit the electronic transmission of controlled substances prescriptions and electronic orders of Schedule I and II controlled substances, the support and operation of DEA's Internet investigations, a major upgrade to the Automation of Reports and Consolidated Orders System (ARCOS), and significant improvements to registration customer/forms service. Other funds accounted for include liaison, policy, regulatory, and analytical activities of the Diversion Control Program. Including the mandatory transfer to Treasury of $15 million, the total amount required to be recovered for Fiscal Year 2005 is $157,265,000.

The anticipated President's Budget Request for Fiscal Year 2006 is $145,307,000 which accounts for inflationary growth from the previous fiscal year estimate and increases in Federal staff salaries. Including the mandatory transfer to Treasury of $15 million, the total amount required to be recovered for Fiscal Year 2006 is $160,307,000.

To calculate inflationary growth, DEA used inflation figures of 1.5 percent for Fiscal Year 2004, 1.6 percent for Fiscal Year 2005 and 1.7 percent for Fiscal Year 2006 and salary increase assumptions of 2.0 percent for Fiscal Year 2004 and 3.4 percent for both Fiscal Year 2005 and Fiscal Year 2006, based on the President's Economic Assumptions. The total amount necessary to collect through fee funds for the Fiscal Year 2004–2006 period is $451,133,000. Based on the amounts required to be collected for the 2004–2006 period to comply with the law, DEA developed the specific fee levels for each registrant category reflected in the previous table. To calculate these fees, DEA first estimated the number of paying registrants for this period and then used this figure combined with the amount required to be collected to set the new fee rate. To calculate the number of paying registrants, DEA used logarithmic regression analysis to project the yearly registrant figures based on historical registrant data for the period of Fiscal Year 1994 through Fiscal Year 2001.

DEA then estimated the number of registrants for each registrant category since different registrant categories pay different fees. Because there were insufficient data for some activities to perform regression analysis, DEA used the percentage for each category using data from the corresponding cycle years in the past.

Finally, based on the analyses conducted, DEA developed the fees for each registrant category consistent with

its current fee structure. In doing so, DEA opted to set the fee level for a three-year period (FY 2004–2006) to avoid the heavy burden on registrants and the additional administrative expenses to DEA that resetting the fee each year would impose. Accordingly, the fees above reflect the *total amount* necessary to be collected for the full three-year period (FY 2004–2006) divided by projected registrants and accounting for projected registrant growth by category for each fiscal year. Because different categories of registrants pay different amounts, DEA weighted the number of registrants in each category to ensure the appropriate reflection in the fee schedule. Because the fees reflect the total amount necessary to be collected for the Fiscal Year 2004–2006 period, DEA may accumulate additional funds beyond those necessary for actual program operations in the initial year (Fiscal Year 2004), but in the final year of the period (Fiscal Year 2006) fee collections are anticipated to fall short of the amount necessary to cover expenditures in that year, so DEA will then draw down the previously collected surplus. The alternatives to this approach would be to reset the fee each year or to set a different fee for each fiscal year; both of these options would cause unnecessary confusion and would impose greater administrative burdens on DEA and registrants.

Regulatory Analyses

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. While DEA recognizes that this regulation will have a financial effect on registrants with the increase in fees, the change in fees is not significant. Moreover, the fees have not been changed in nine years, and DEA is legally mandated to collect fees to cover the full costs of the Diversion Control Program. The appropriations process was used to determine the budget on which the fees are based. The increase in fees after nine years covers both inflation and enhancements to address additional responsibilities assumed by the Diversion Control Program.

In considering options for collecting the full costs of the Diversion Control Program as mandated by law (21 U.S.C. 886a(3)), DEA considered several alternatives to the approach proposed in this regulation. One alternative would be to reset the fee each year for each category of registrant according to the Budget Authority. Another alternative would be to set a different fee for each fiscal year. DEA determined that both of these options would cause unnecessary confusion with fee changes each year and would impose greater administrative and financial burdens on DEA and registrants than the approach proposed in this regulation.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant regulatory action, but this action has been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This rulemaking 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 rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. While it will affect the private sector in excess of $100,000,000 per year, the effect on individual entities and practitioners is minimal. The majority of the affected entities will pay $131 per year (or $391 for a three year registration period). Moreover, this rule is promulgated in compliance with Congressional mandate that the full cost of operating the DCP be collected through registrant fees as stipulated in the 1993 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (Pub. L. 102–395) and codified in 21 U.S.C. 886a(3). Detailed estimates and analyses, including specific fee amounts for individual registrants, are included in the text of the proposed rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. While this rule will result in an annual effect on the economy of $100,000,000 or more, it will not result in a major increase in costs or prices or cause 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. This rule is not a discretionary action but rather responds to the Congressional mandate that the full operating costs of the DCP be collected through registrant fees as described above. The individual effect on small business registrants is minimal ranging from $131 to $1,605 per year with the majority of affected registrants paying an annual fee of $131 (or $391 for three years).

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures. For the reasons set out above, 21 CFR part 1301 is proposed to be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.13 is proposed to be amended by revising paragraph (e)(1) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * *

(1)

Business activity	Controlled substances	DEA application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(i) Manufacturing	Schedules I–V	New—225 Renewal—225a	1,605 1,605	1	Schedules I–V: May distribute that substance or class for which registration was issued; may not distribute or dispose any substance or class for which not registered. Schedules II–V: Except a person registered to dispose of any controlled substance may conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a mfg. Was issued.
(ii) Distributing	Schedules I–V	New—225 Renewal—225a	804 804	1	
(iii) Dispensing or instructing (includes Practitioner, Hospital/Clinic, Retail Pharmacy, Teaching Institution).	Schedules II–V	New—224 Renewal—224a	391 391	3	May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under state statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II–V in a proportion not exceeding 20% of the complete solution, compound or mixture.
(iv) Research	Schedule I	New—225 Renewal—225a	131 131	1	A researcher may manufacture or import the basic class of substance or substances for which registration was issued, provided that such manufacture or import is set forth in the protocol required in Section 1301.18 and to distribute such class to persons registered or authorized to conduct research with such class of substance or registered or authorized to conduct chemical analysis with controlled substances.
(v) Research	Schedules II–V	New—225 Renewal—225a	131 131	1	May conduct chemical analysis with controlled substances in those schedules for which registration was issued; manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration or reregistration and provided that the manufacture is not for the purposes of dosage form development; import such substances for research purposes; distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities or research with such substances, and to persons exempted from registration pursuant to Section 1301.24; and conduct instructional activities with controlled substances.
(vi) Narcotic Treatment Program (including compounder).	Narcotic Drugs in Schedules II–V.	New—363 Renewal—363a	131 131	1	
(vii) Importing	Schedules I–V	New—225 Renewal—225a	804 804	1	May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered.
(viii) Exporting	Schedules I–V	New—225 Renewal—225a	804 804	1	
(ix) Chemical Analysis	Schedules I–V	New—225 Renewal—225a	131 131	1	May manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to section 1301.24; may export such substances to persons in other countries performing chemical analysis or enforcing laws related to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

Business activity	Controlled substances	DEA application forms	Application fee ($)	Registration period (years)	Coincident activities allowed
(x) Disposer	Schedules I–V	New—225	131	1	
		Renewal—225a	131		

* * * * *

Dated: February 5, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–3765 Filed 2–14–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI88

Subsistence Management Regulations for Public Lands in Alaska

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Forest Service and U.S. Fish and Wildlife Service, are proposing to amend the regulations governing subsistence use of wildlife in Alaska by clarifying how old a person must be to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit and by removing the requirement that Regional Councils must have an odd number of members. These changes are viewed as noncontroversial and are designed to ensure that the regulations for the Federal Subsistence Management Program in Alaska are easy for the public to understand and reflect current policies.

DATES: We must receive your written public comments no later than April 4, 2003.

ADDRESSES: Submit written comments to Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503. Submit electronic comments to *Bill_Knauer@fws.gov.* For electronic comments, please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

FOR FURTHER INFORMATION CONTACT: For Forest Service questions, contact Ken Thompson, Regional Subsistence Program Manager, USDA–FS Alaska Region, at (907) 786–3592. For Fish and Wildlife Service questions, contact Thomas H. Boyd at (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 36 CFR part 242 and 50 CFR part 100 (referred to below as ''the regulations''), authorized by Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3126), implement the Federal Subsistence Management Program on public lands in Alaska.

On May 7, 2002, we published in the **Federal Register** (67 FR 30559–30571) a final rule that made certain changes to the regulations. In that final rule, we clarified how old a person must be to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit, and we retained, without change, a long-held requirement that Regional Councils must have an odd number of members.

At the request of other agencies, in the final rule, we added language to § ___.6(b) of the regulations to clarify that, ''In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to have reasonably harvested that species yourself (or under the guidance of an adult).'' Since the publication of the final rule, we have determined that this language could be misleading and should be further clarified. Therefore, we are proposing editorial changes to this paragraph to make it easier to understand.

In addition, in the final rule, we retained, without change, a long-held requirement in § ___.11(b)(1) stating, ''The number of members for each Regional Council shall be established by the Board, and shall be an odd number.'' We retained the requirement that Regional Councils have an odd number of members to prevent the possibility of a tie during Council votes. Since the publication of the final rule, however, the Deputy Secretary of the Department of the Interior approved a Federal Subsistence Board recommendation to increase the size of Regional Councils to 10 or 13 members. These increases will help achieve better balance, as required by the Federal Advisory Committee Act (5 U.S.C. App.1), in Regional Councils. Further, we have learned that in Regional Council meetings, if a vote count is tied, that motion fails; therefore, our reason for requiring an odd number of members does not apply. In light of this new information, we are proposing to revise § ___.11(b)(1) to remove the requirement that Regional Councils must have an odd number of members. This change would bring this paragraph into accord with current policies.

Elsewhere in today's **Federal Register**, we have published a direct final rule to promulgate the same regulatory changes to 36 CFR 242 and 50 CFR 100 proposed here. We published the direct final rule because we believe these changes are noncontroversial and anticipate no adverse public comment on them. If we receive no adverse comments regarding these amendments within 45 days, then these changes become effective 60 days from today, and we will withdraw this proposed rule. If we do receive adverse comments, then this proposed rule initiates the normal notice-and-comment rulemaking proceedings. We are opening this comment period for 45 days instead of 60 days because we need this regulatory change in place prior to the councils' recruitment and appointment process for the winter 2004 meeting cycle. This entire process normally takes a year to complete.

Required Determinations

Regulatory Planning and Review (E.O. 12866), Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

An economic analysis is not necessary, as this proposed rule would not have an economic impact on any entities, large or small. The Office of Management and Budget (OMB) has determined that this proposed rule is not a significant rule under E.O. 12866, and, therefore, OMB has not reviewed this proposed rule.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.

In accordance with the Unfunded Mandates Reform Act:

(a) This proposed rule would not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required.

(b) This proposed rule would not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, the proposed rule would not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This proposed rule does not contain any new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared for this proposed rule. This proposal does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments propose to amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART_____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 would continue to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In § _____.6, paragraph (b) would be revised to read as follows:

§ _____.6 Licenses, permits, harvest tickets, tags, and reports.

* * * * *

(b) In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to reasonably harvest that species yourself (or under the guidance of an adult).

* * * * *

3. In § _____.11, paragraph (b)(1), the first sentence would be revised to read as follows:

§ _____.11 Regional advisory councils.

* * * * *

(b) * * *

(1) The number of members for each Regional Council shall be established by the Board. * * *

* * * * *

Dated: January 31, 2003.

Gale A. Norton,

Secretary of the Interior.

Steven A. Brink,

Acting Regional Forester, USDA—Forest Service.

[FR Doc. 03–3742 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045; FRL–7446–4]

RIN 2060–AK53

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: The EPA is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills, which were issued on January 12, 2001 under section 112 of the Clean Air Act. This action proposes to improve implementation of the emission standards by clarifying and consolidating monitoring and testing requirements and adding a site-specific compliance alternative for one pulp mill.

In the Rules and Regulations section of this **Federal Register**, we are issuing these amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments. We have explained our reasons for these revisions in the preamble to the direct final rule.

If we receive any significant adverse comment on one or more distinct amendments in the direct final rule, we will publish a timely notice of withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule. If no significant adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

DATES: *Comments.* Written comments must be received by March 20, 2003, unless a hearing is requested by February 28, 2003. If a hearing is requested, written comments must be received by April 4, 2003.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by February 28, 2003, a public hearing will be held on March 4, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, or through hand delivery/courier. By mail, comments may be submitted (in duplicate, if possible) to EPA West (Air Docket), U.S. EPA, Room B–108 (MD–6102T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0045. By hand delivery/courier, comments may be submitted (in duplicate, if possible) to EPA Docket Center (Air Docket), U.S. EPA, Room B–108 (MD–6102T), 1301 Constitution Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0045.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC at 10:30 a.m. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact the person listed below under **FOR FURTHER INFORMATION CONTACT,** at least 2 days in advance of the hearing.

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

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

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

*North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.860 of the national emission standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document. *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0045. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW, Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which are not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an electronic mail (e-mail) address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search'' and key in Docket ID No. OAR–2002–0045. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by e-mail to *air-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0045. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail

system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: EPA West (Air Docket), U.S. EPA, Room B–108 (MD–6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0045.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center (Air Docket), U.S. EPA, Room B–108 (MD–6102T), 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0045. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID OAR–2002–0045.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Jeff Telander, c/o OAQPS Document Control Officer (MD–C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0045. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

What Are the Administrative Requirements for This Action?

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has fewer than 750 employees for NAICS codes 32211, 32212, and 32213 (pulp, paper, and paperboard mills); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives which minimize any significant economic impact of the proposed rule on small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of testing and monitoring and add a new compliance option. We have, therefore, concluded that today's proposed rule will have no adverse impacts on any small entities and may relieve burden in some cases.

List of Subjects in 40 CFR Part 63

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

Dated: January 27, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–3701 Filed 2–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74, 76 and 90

RIN 4214

[MB Docket No. 03–15; FCC 03–8]

Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document commences the Commission's second periodic review of the progress of the conversion to digital television. The document revisits several issues addressed in the first periodic review and solicits comment on a number of additional issues that the Commission believes essential to resolve to ensure continued progress on the transition.

DATES: Comments are due on or before April 14, 2003; reply comments are due on or before May 14, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554. See supplementary information for filing information.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau at (202) 418–2154, or Peter Corea, Policy Division, Media Bureau at (202) 418–7931.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Notice of Proposed Rule Making* (''*NPRM*'') MB Docket No. 03–15; FCC 03–8, adopted January 15, 2003, and released January 27, 2003. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy

contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419 comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998). This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via email at *bmillin@fcc.gov.* Parties may submit their comments using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments may be filed as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Additional information on ECFS is available at *http://www.fcc.gov/e-file/ecfs.html.*

Filings may also be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's contractor, Histrionics, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Synopsis of Notice of Proposed Rulemaking

Channel Election

1. In the DTV Sixth Memorandum Opinion and Order (''*6th MO&O*''), (63 FR 15774, April 1, 1998), we determined that, after the transition, DTV service would be limited to a ''core spectrum'' consisting of current television channels 2 through 51 (54–698 MHz). Although some stations received transition channels out of the core, and a few have both their NTSC and DTV channels outside the core, we believe that there will be sufficient spectrum to accommodate all DTV stations within the core by the end of the transition. Having stations with two in-core channels decide which one of the channels would be most suitable for use in digital broadcasting will assist us in determining what channels will be available for stations with two out-of-core channels and in clearing the out-of-core spectrum.

2. In the First DTV Periodic Review Memorandum Opinion and Order, (''*1st MO&O*''), (66 FR 65122, December 18, 2001), we temporarily deferred channel election deadlines until this next periodic review. Accordingly, we now request comment on the new channel election deadline. We propose that commercial and noncommercial broadcast licensees with two in-core assigned channels make their final channel election by May 1, 2005. This date provides three years for commercial broadcasters and two years for noncommercial broadcasters after the applicable digital construction deadline to make the channel election. A May 1, 2005, channel election deadline also provides licensees that will have to move into the core time to plan for their move before December 31, 2006. We seek comment on this proposal.

3. As an alternative, we seek comment on whether establishing the same deadline(s) for channel election as for replication and maximization protection, would be more effective in speeding the transition. As our proposed replication and maximization protection deadlines are later than May 1, 2005, aligning the channel election deadline with these deadlines would give broadcasters more time to increase to full power before they determine which channel is preferable for digital broadcasting. We seek comment on whether we should align the channel election deadline(s) with the replication and maximization protection deadlines we establish herein and, if so, what the deadline(s) should be.

4. As we stated in the First DTV Periodic Review Report and Order (''*1st R&O*''), (MM 00–39, 66 FR 09973, February 13, 2001), in all cases, including stations with both channels in-core, we reserve the right to select the final channel of operation in order to minimize interference and maximize the efficiency of broadcast allotments in the public interest. We intend to review the channel elected to ensure that its use furthers these goals.

DTV/Analog In-Core Channel Swaps

5. Some stations with two in-core channels have already determined that they prefer to use their current analog NTSC channel for DTV operations and want to commence digital operations on the new channel before the end of the transition. Currently a station with in-core DTV and NTSC channels can swap those channels only through a dual rulemaking proceeding to change both the DTV and NTSC Tables of Allotments. As the DTV transition proceeds, it is possible that many stations will want to explore this swap option. Accordingly, we seek comment on whether we should allow such channel swaps through an application process.

Replication and Maximization for In-Core Channels

6. In the *1st MO&O* we stated that we would establish in this second DTV periodic review a date by which broadcasters must either replicate their NTSC service areas or lose DTV service protection to the unreplicated areas, and by which broadcasters with authorizations for maximized digital facilities must either provide service to the associated coverage area or lose DTV service protection to the uncovered portions of those areas. We stated that these replication and maximization protection deadlines may be earlier than, but will in no event be later than,

the latest of either the end of 2006 or the date by which 85% of the television households in a licensee's market are capable of receiving the signals of digital broadcast stations. We now seek comment on establishing new dates for maintaining interference protection for the unserved portions of both the replication and maximization service areas of DTV stations on channels 2–51.

7. For DTV channels within the core spectrum, we propose to set new replication and maximization protection dates close to the end of the transition: for the top-four network affiliates (*i.e.,* ABC, CBS, Fox and NBC) in markets 1–100—July 1, 2005; and for all other commercial DTV licensees as well as noncommercial DTV licensees—July 1, 2006.

8. We seek comment generally on the appropriateness of these dates. We also invite commenters to propose alternative approaches for establishing interference protection deadlines, such as giving stations a certain amount of time (*e.g.,* 24 months) after the station commences digital service or after adoption of the Report and Order (*''R&O''*) in this proceeding, whichever is later, to fully replicate or maximize, or establishing a replication/maximization deadline for each market based on when that market reaches a specified digital service penetration level.

9. If a station fails to construct and operate facilities that fully replicate its NTSC service area or provide signal coverage over an authorized maximized service area by the interference protection deadline(s) we will establish in this proceeding, we seek comment on how the Commission should dispose of any construction permits or applications for replication or maximization facilities at that time. Should applications for facilities in excess of those in actual operation by the station be dismissed? How should the Commission treat authorizations for facilities not being fully used by the station? For example, a station has a construction permit for facilities that would serve a larger area than facilities it is operating pursuant to Special Temporary Authority. Should such a construction permit be modified to specify the facilities in actual operation? In addition, we invite comment on how the Commission should treat the spectrum use opportunity that would be created after the interference protection deadline(s). Who should be permitted to file an application for this spectrum? Should any applications for this spectrum be subject to competing applications? Our inclination is to restrict any station that has failed to fully replicate or construct its authorized maximization facilities by the applicable deadline from filing an application to expand coverage for a certain period of time in order to allow other existing or new stations, including Class A eligible LPTV stations on out-of-core channels, to apply to use this spectrum. If we were to adopt this approach, how long should the restriction on the filing of expansion applications by stations that did not fully replicate or maximize by the deadline last? Any decision we reach in this proceeding regarding future licensing of this spectrum will be consistent with 47 U.S.C. 309(j).

10. Finally, we seek comment on whether we should adopt an intermediate signal coverage requirement beyond a broadcaster's current obligation to cover its community of license and in addition to the ultimate ''use-or-lose'' deadline for full replication or maximization. In the *1st MO&O*, the Commission predicted that the ''requirement that broadcasters serve their community of license will ensure that, for most stations, the majority of their analog service populations will receive initial digital service.'' We seek comment on whether this predictive judgment has been borne out in practice. For instance, we seek comment on whether some of the larger cities in which stations can operate under low-power STAs have large suburban populations that may not be served by a signal that only covers a station's community of license. If there are significant numbers of consumers not being served by stations operating under low-power STAs, we seek comment on what actions, if any, the Commission should take. Should the Commission establish a deadline by which time stations must provide DTV service within the entire area of their analog ''city-grade'' coverage contour or their Grade A coverage? Yet another alternative would be to require broadcast stations to deploy transmission equipment that is capable of being upgraded to serve broader coverage areas (*e.g.*, their analog Grade ''B'' coverage), but permit the stations themselves to determine when any intermediate power increases occur prior to the full replication ''use-or-lose'' date. In general, our goal is to ensure that the maximum number of consumers is able to receive digital television as quickly as possible while providing broadcasters a realistic timetable for increasing to full power.

Band-Clearing Arrangements

11. In the *1st MO&O*, we temporarily deferred the deadline for loss of interference protection for unserved areas for broadcasters involved in a band-clearing arrangement that are left with a DTV single-channel allotment. We stated that we will continue to protect throughout the course of the transition the analog TV service area of stations that do not have a paired DTV channel, either because they were not assigned a paired DTV channel or because they elect voluntarily to relinquish their paired DTV channel and convert to single channel analog operation as part of the 700 MHz band clearing, as long as the stations continue to operate in an analog mode.

12. We stated that our intention was to provide broadcasters involved in band-clearing with the same treatment as other broadcasters in terms of our DTV replication policy. We also said that, in our next periodic review, we would establish a new replication protection deadline for these broadcasters within the same timeframe as that established for replication and maximization for other broadcasters. We hereby seek comment on the timeframe needed and appropriate for broadcasters involved in band-clearing proposals to replicate their service area once commencing digital operation.

Interference Protection of Analog and Digital Television Service in TV Channels 51–69

13. We seek comment on whether we should adopt the same or different replication and maximization interference protection deadlines for stations operating on TV channels 52–69 (698–806 MHz, also referred to as the ''700 MHz band'') as for stations operating on core channels. In order to reclaim and relicense channels 52–69 in accordance with statutory mandate, the Commission is relocating television operations in this spectrum to the core spectrum (TV channels 2–51), and has reallocated the 698–806 MHz band to other services. During the transition to digital broadcasting, incumbent broadcasters are permitted to continue to operate in the 698–806 MHz band. Licensees of new public safety, commercial wireless, and other services are permitted to operate in the band prior to the end of the transition, provided they do not interfere with incumbent analog and digital broadcasters.

1. Definition of ''Actual'' Broadcast Parameters Under Sections 90.545(c)(1)(ii) and 27.60(b)(1)(iii)

14. A number of the interference protection issues raised herein with respect to the 698–806 MHz band relate to the interpretation of the alternative protection criteria for wireless operators

set forth in §§ 90.545(c) and 27.60(b) of the rules, and whether those provisions require protection of broadcast authorizations and allotments. In particular, do these provisions require protection of broadcast authorizations and allotments when the station's operating parameters are less than the parameters described in an existing authorization or allotment?

15. Sections 90.545(c) and 27.60(b) describe alternative methods for a wireless applicant or licensee in the 700 MHz band to move its stations closer to an analog TV or DTV antenna while still complying with the interference protection requirements in the rules. Pursuant to one of these alternatives, the applicant or licensee may submit an engineering study that considers the ''actual,'' rather than ''hypothetical,'' parameters of the analog TV or DTV station and that demonstrates that intervening terrain or other factors permit the land mobile stations and these facilities to be more closely spaced. In the Order adopting this alternative, we stated that applicants should be allowed to submit engineering studies showing how they propose to meet the appropriate desired/undesired (''D/U'') signal strength ratio at the existing TV station's ''authorized or applied for'' Grade B service contour or equivalent contour for DTV stations instead of the hypothetical Grade B contour.

16. We tentatively conclude that §§ 90.545(c)(1)(ii) and 27.60(b)(1)(iii) should be amended to make clear that the interference protection specified in those provisions should be afforded to authorized and/or applied for NTSC and DTV facilities, including the facilities specified on the broadcast station's license or construction permit or both when a station has both a license and a construction permit. We invite comment on this approach. If we do not protect all authorized and/or applied for facilities, what facilities should be protected?

2. Replication

17. We invite comment on the extent to which facilities defined in the DTV Table of Allotments on channels 52–69 should be protected by wireless operators and other services in those bands. In other words, in addition to protecting authorized and/or applied for facilities, should we interpret the requirement that wireless operators and other services protect the ''actual'' parameters of existing TV stations to require protection of full replication facilities, regardless of whether the DTV station is currently operating, or has filed an application to operate, pursuant to those facilities? If so, how long should this interference protection last?

18. We tentatively conclude that DTV full replication facilities should be protected as ''actual.'' We seek comment on this view and on whether we should establish the same interference protection deadline for replication facilities for stations on channels 52–69 as we will establish in this proceeding for stations on in-core channels.

3. Maximization

19. We invite comment on whether we should establish an earlier deadline for loss of interference protection to the unserved areas described in existing maximization authorizations on channels 52–69 than the deadline we establish for maximization facilities on in-core channels. We also invite comment on whether we should establish the same maximization interference protection deadline for the entire 700 MHz band, or treat the upper and lower bands differently. If we were to establish a different deadline for all or part of channels 52–69, what should that deadline be?

4. Future Modification Applications

20. In June 2002, the Media Bureau adopted a freeze on the filing of analog TV and DTV ''maximization'' applications in channels 52–59. The Bureau announced that it would not accept for filing television modification applications that would increase a station's analog or DTV service area in channels 52–59 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) The DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of the Public Notice. The Bureau will consider, on a case-by-case basis, requests for waiver of the freeze on new maximization applications in channels 52–59 where the application would permit co-location of transmitter sites or is otherwise necessary to maintain quality service to the public. The freeze was adopted to assist participants in Auction No. 44, consisting of spectrum licenses in the Lower 700 MHz Band, to determine the areas potentially available in the band for the provision of service by auction winners before the channels are cleared of broadcast stations. That auction was scheduled to begin June 19, 2002, but was postponed in compliance with the Auction Reform Act of 2002.

21. The Media Bureau recently adopted a similar freeze on the filing of analog TV and DTV ''maximization'' applications in channels 60–69. As with the freeze on maximization in channels 52–59, the Bureau will consider requests for waiver of the freeze on channels 60–69 on a case-by-case basis for stations that propose an increase or shift in coverage under certain circumstances, including to permit co-location at a common antenna site or to resolve certain technical difficulties. We intend to protect applications for waiver under these maximization filing freezes in the same manner that we protect other pending applications. Absent a waiver, future applications for maximization of facilities on channels 52–69 now are foreclosed.

5. Applications for New Analog TV or DTV Facilities

22. With respect to the Lower 700 MHz Band, digital service in the band could be proposed after the auction by a station with an existing DTV allotment on a channel outside the 52–58 band seeking to move to a channel inside this band or by a DTV station inside this band seeking to move to another channel inside the band. We invite comment on whether and how we should protect such proposed digital service on channels 52–58. We also seek comment on whether 47 CFR 73.622 should be amended to require that a broadcaster proposing a channel change that would cause harmful interference to a new entrant on channels 52–59 demonstrate that no other suitable channels are available on 2–58 that would avoid such interference.

6. Channel 51

23. Finally, we seek comment on the interference protection that should be afforded by wireless entities and other new service providers to future analog TV and DTV facilities on channel 51 that are authorized or requested after the auction of the spectrum comprising channel 52.

Pending DTV Construction Permit Applications

24. A number of television licensees have not yet been granted an initial construction permit (CP) for a DTV facility. Almost all of these licensees have filed an application for a digital CP, but grant of these applications has been delayed for a variety of reasons including delays in international coordination with Canada and Mexico and unresolved interference issues. While the Commission has successfully resolved a number of obstacles to grant of outstanding digital CP applications, and the number of licensees without an initial digital CP has been significantly reduced, approximately 140 commercial

and noncommercial television licensees still have not yet been granted an initial DTV CP. To date, these applicants have not been required to construct DTV facilities pending action on their outstanding DTV applications.

25. To ensure that all licensees that have been awarded digital spectrum begin to provide digital service, we propose to require that all such television licensees that have filed an application for a digital CP with the Commission that has not yet been granted must commence digital service pursuant to special temporary authority (''STA'') within one year from adoption of the *R&O* in this proceeding. Within this time frame, these applicants would be required to request an STA from the Commission and to construct at least the minimum initial facilities required to serve their community of license, as specified in the policy outlined in the *1st MO&O.* We request comment on this proposal. We also request comment on whether the channel election and interference protection deadlines adopted in this proceeding should apply to these licensees and, if not, what other deadlines would be appropriate.

Noncommercial Educational Television Stations

26. Noncommercial television broadcasters are scheduled to complete construction of their digital stations and commence digital service by May 1, 2003. We invite comment on whether noncommercial broadcasters that are not already airing a digital signal anticipate they will meet the May 1, 2003 construction deadline. For any station that does not anticipate meeting the deadline, what obstacles are preventing completion of construction? We also invite comment generally on what steps, if any, the Commission should take to assist noncommercial stations in the transition to DTV. For example, should the financial hardship standard for grant of an extension of time to construct a digital television station be applied differently to noncommercial licensees?

7. Simulcasting

27. In the DTV *5th R&O,* we adopted rules requiring DTV licensees to simulcast 50% of the video programming of their analog channel on their DTV channel by April 1, 2003. This requirement increases to a 75% simulcast requirement in April 2004, and a 100% requirement in April 2005. We seek comment on whether we should retain, revise or remove the simulcast requirement, how to define simulcasting, and whether the existing dates are appropriate. What extent of program duplication should be required to fulfill simulcasting obligations? Does the ultimate requirement of 100% simulcasting other than at the very end of the transition create disincentives for broadcasters to innovate? If broadcasters have a market-based incentive to simulcast and currently are simulcasting 100% of their analog programming on their digital channel, is a regulatory requirement to simulcast necessary? Is the simulcasting requirement causing broadcasters to forego creative uses of digital technology? Would something less than a 100% simulcast requirement be sufficient to protect analog viewers while allowing for innovation on the DTV channels? If maintaining some simulcast obligation is appropriate, we seek comment on whether we should revise the current dates for the phase-in of simulcast requirements.

28. We propose a definition of simulcasting in the DTV context as follows: Within a 24-hour period, the broadcast on a digital channel of the same programming broadcast on the analog channel, excluding commercials and promotions and allowing for enhanced features and services.

We request comment on this proposed definition. We also seek comment on how simulcast requirements and the definition of ''simulcasting'' relate to the substantial duplication decisions in the must carry portions of the Act.

Effect on Prime Time Broadcasting Requirements

29. If we decide to eliminate or change the simulcasting requirements, we must adjust the digital broadcast schedule requirements that are currently pegged to the simulcast requirements. We propose that, if we eliminate or reduce the simulcasting requirements in § 73.624(f), we amend § 73.624(b)(1) to require DTV stations subject to the May 1, 2002, or May 1, 2003, construction deadlines to air, by April 1, 2003, a digital signal for an amount of time equivalent to 50% of the amount of time they provide an analog signal. The digital signal must be aired during prime time hours. This minimum digital operation requirement would increase to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the amount of time the station airs an analog signal), and to 100% on April 1, 2005. We seek comment on this proposal and invite alternatives as well.

Section 309(j)(14)

30. Section 309(j)(14)(A) of the Communications Act requires the Commission to reclaim the 6 MHz each broadcaster uses for transmission of analog television service by December 31, 2006. Congress recognized, however, that not all stations will convert to DTV at the same time. Thus, ''to ensure that a significant number of consumers in any given market are not left without broadcast television service as of January 1, 2007,'' Congress required the Commission in section 309(j)(14)(B) to grant extensions to any station in any television market if one or more of three conditions exist. We review the language of section 309(j)(14) and invite comment on how we should interpret certain portions of that statutory provision. We also seek comment on establishing rules and filing deadlines governing how and when extension requests will be made.

Filing of Extension Requests

31. Section 309(j)(14)(B) provides that the Commission shall extend the date by which stations must cease analog service for qualifying stations that request an extension. We intend to develop a form to be used by stations to request an extension under this provision. We invite comment on when stations seeking an extension should be required to file their extension request. We invite comment on the period of time for which extensions should be granted. We also invite comment on whether the Commission may grant a blanket extension under section 309(j)(14)(B) to all stations in a market or nationally if the Commission finds that the criteria for return of analog spectrum have not been met. What findings would the Commission need to make in order to grant a blanket extension?

Definition of Television Market

32. Under section 309(j)(14)(B), the Commission must consider whether any one of the three conditions for an extension exist in the requesting station's ''television market.'' For purposes of applying section 309(j)(14)(B), we invite comment on how we should define ''television market.'' One option would be to define ''television market'' as the designated market area or DMA, as defined by Nielsen Media Research, in which the television station requesting the extension is located. Another option would be to define ''television market'' as the requesting station's Grade B contour.

33. Use of DMAs to define the applicable market may be more consistent with the language of section 309(j)(14), which requires the Commission to grant an extension to ''any station that requests such an extension in any television market.'' This language seems to contemplate that

each market will contain more than one television station, as is generally true of DMAs. The Grade B contour of any station requesting an extension, in contrast, is generally unique for each station, and therefore contains only one station. A Grade B test may also be more difficult to administer as market data, including information about digital-to-analog converter technology and the number of television households with digital television reception capability, would have to be compiled for the area within each requesting station's Grade B contour, rather than DMA-wide.

34. Use of DMAs to define the applicable market for purposes of section 309(j)(14)(B) would ensure that transition progress throughout the DMA is considered in determining whether the criteria for extension have been met. As parts of the United States, particularly in rural areas, do not lie within the Grade B contour of any full-power television station, a Grade B test would not consider transition progress in these areas before cessation of analog service.

35. If we define the applicable market by reference to a station's Grade B contour, we invite comment on whether we should refer to the station's analog Grade B or the equivalent digital contour. In addition, does the market of a station requesting an extension under section 309(j)(14) include only the requesting station's Grade B contour, or also the Grade B contour of any TV translator retransmitting the requesting station's signal?

36. The Grade B contour of many stations reaches more than one DMA. Under a DMA-only market test, a station could be denied an extension of its analog license without consideration of the status of the transition in a neighboring DMA where the station may have a significant number of viewers. To address this situation, another option would be to adopt a modified DMA market test that considers viewers in adjacent DMAs in situations where stations have a significant number of viewers in those DMAs. For example, where a station requesting a transition extension has a significant number of viewers in a DMA other than its designated DMA (''home DMA''), we could require that both DMAs meet the statutory criteria for the transition in section 309(j)(14)(B). We request comment on this approach.

37. How we define the ''market'' is important in applying each of the conditions for an extension under section 309(j)(14)(B). We request comment on the impact of a DMA, modified DMA, or Grade B market definition on the availability of extensions under each of these conditions.

Network Digital Television Broadcast Test

38. Under the first ground for an extension under section 309(j)(14)(B), the Commission must grant an extension if one or more of the stations in the market that are licensed to or affiliated with one of the four largest national television networks is not ''broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market.'' We invite comment on how we should interpret this provision. We read the language of section 309(j)(14)(B)(i) to require that all stations in a market licensed to or affiliated with a top-four network must be broadcasting in digital before analog service is required to cease in the market, even if a top-four network has more than one affiliate in the market. We request comment on this view. Should we consider a station that is broadcasting a digital signal pursuant to a DTV STA, and providing service in compliance with the Commission's minimum initial digital television construction requirements, to be ''broadcasting a digital television service signal'' for purposes of this provision? We propose that a station not meeting such minimum initial DTV operating requirements would not be considered to be ''broadcasting a digital television signal'' within the meaning of this provision. Thus, extensions would be available under section 309(j)(14)(B)(i) in any market where a top four network affiliate is not providing digital service in accordance with at least the Commission's minimum requirements for coverage of the community of license and hours of operation. We request comment on this proposal.

39. Alternatively, we could require that a station be providing service to the entire area encompassed within the station's DTV allotment in order to be considered ''broadcasting a digital television service signal'' in the market under section 309(j)(14)(B)(i). To ensure that stations not postpone replication to delay return of analog spectrum, we propose that if we require service to the full replication area under section 309(j)(14)(B)(i), we would not consider lack of replication to constitute lack of service after the replication protection deadline adopted in this proceeding.

Converter Technology Test

40. Under the second ground for an extension under section 309(j)(14)(B), the Commission must grant an extension to a requesting station if the Commission finds that digital-to-analog converter technology is not ''generally available'' in the market. For purposes of section 309(j)(14)(B)(ii), we propose to define as a ''digital-to-analog converter'' units that are capable of converting a digital television broadcast signal to a signal that can be displayed on an analog television set. We invite comment on this definition. Should we consider as a ''digital-to-analog converter'' a unit that is not capable of displaying in analog format signals originally broadcast in all digital formats? We also request comment on how we should interpret the phrase ''generally available'' under section 309(j)(14)(B)(ii). For example, should we require only that digital-to-analog converter boxes be available for sale at retail outlets in the market or for sale or lease from cable operators or satellite providers? How widespread must the availability be to be considered ''generally available?'

15 Percent Test

41. Section 309(j)(14)(B)(iii) provides for a third ground for extension for markets that do not qualify under section 309(j)(14)(B)(i) or (ii). Section 309(j)(14)(B)(iii) sets forth a two-part test. The first prong of the test, described in section 309(j)(14)(B)(iii)(I), is met where 15 percent or more of the television households in the market do not subscribe to an MVPD (as defined in 47 U.S.C. 602) that ''carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such a market.''

42. Read literally, section 309(j)(14)(B)(iii)(I) appears to require that an MVPD, such as a cable system, must be carrying all of the television stations broadcasting a digital channel as a first step to satisfy this prong of the test. Read thus, if one or two digital television stations in a market are not carried by a cable or satellite provider (*e.g,* because the station is not carried voluntarily and is not eligible for mandatory carriage), then the criterion is not met. In almost all DMAs, there are stations that are not entitled to must-carry on cable systems in the DMA and that are not carried by the systems voluntarily. Did Congress intend that this prong would be very rarely satisfied in a market?

43. We invite comment on whether there is a more flexible interpretation of

the language in the statute. How should this language influence our definition of ''market?'' Can we conclude that only television broadcast stations that provide a good quality digital signal to the MVPD headend or local receive facility are contemplated by this language? If we interpret section 309(j)(14)(B)(iii)(I) as requiring carriage of only those digital stations in the market entitled to must-carry, the availability of extensions under this provision will be more limited, and the market is likely to transition to digital more quickly. On the other hand, if we interpret section 309(j)(14)(B)(iii)(I) as requiring that all stations broadcasting digital signals be carried regardless of the station's must-carry rights and signal delivery capability, this prong may be satisfied less often. Moreover, a station could refuse to grant retransmission consent, and prevent carriage, which would in turn prevent the MVPD from counting towards the market transition. As a result, the analog licenses would be extended in every market in which the 15% criteria is not met by households possessing over-the-air digital or down-conversion equipment. Is this the result that Congress intended or that is compelled by the language in the statute?

44. We also invite comment on whether, under section 309(j)(14)(B)(iii), MVPDs must carry only primary, full power television stations in the market, or also Class A LPTV stations or other secondary non-Class A LPTV stations and TV translators. If section 309(j)(14)(B)(iii) is read to require carriage of all of these facilities in the market, and ''market'' is defined as DMA, then this prong of the transition criteria will be satisfied less often. If the market is defined as the station's Grade B contour or service area, then it may be more likely that cable systems within the station's Grade B area would carry that station (*e.g.*, the signal quality issue is less likely to arise). How does this result influence our decision on the proper definition of market?''

45. Under the second part of the 15% test, an extension should be granted if 15 percent or more of the television households in the market do not have either ''(a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or (b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.''

46. We invite comment on how we should interpret the phrase ''capable of receiving the digital television service signals of the television stations licensed in such market.'' Does this phrase require that a household be capable of over-the-air reception of all television stations licensed in the market in order not to be counted toward the 15 percent threshold for an extension? Under this interpretation, any household outside the service contour of any digital station in the market would be counted toward the 15 percent threshold under these provisions (recognizing that such households could be excluded from counting toward the 15 percent under section 309(j)(14)(B)(iii)(I) if they are MVPD subscribers as defined in that provision). What if a household receives a parent station's signal rebroadcast in analog format via TV translator (*e.g.*, the parent station originally broadcast the signal in digital format and the signal was downconverted to analog format by a TV translator)? We note that § 74.701 of the Commission's rules requires that TV translators retransmit the signals of the parent station ''without significantly altering any characteristic of the original signal other than its frequency and amplitude.'' Should our rules permit TV translators to downconvert to analog format a signal originally broadcast by the parent station in digital format? As a separate issue, we propose to define television receivers ''capable of receiving'' DTV signals under section 309(j)(14)(B)(iii)(II)(a) as television sets equipped with either integrated or separate (*e.g.*, set-top box) DTV tuners, and request comment on this definition.

47. For purposes of calculating households in the market to determine whether the 15 percent test is met under both prongs of section 309(j)(14)(iii), we propose to interpret that provision as requiring grant of an extension where 15 percent or more of the television households in the market neither subscribe to an MVPD that carries local DTV signals (section 309(j)(14)(B)(iii)(I)), nor have equipment capable of displaying signals originated in DTV (section 309(j)(14)(B)(iii)(II)). In other words, for a household to be counted in the 15 percent, that household must both be a non-subscriber (''non-subscriber'' may include subscribers to MVPDs that carry the required DTV stations but who lack equipment to view such signals in either analog or digital format) *and* lack the capability to receive DTV signals over-the-air, either through a set with an integrated DTV tuner, via a DTV set-top box, or via a digital-to-analog downconverter. We believe that this interpretation best reflects the intent of Congress that ''a significant number of consumers in any given market are not left without broadcast television service'' as we transition from analog to digital. Accordingly, we propose to grant extensions under section 309(j)(14)(B)(iii) only where the requisite number of television households (15 percent or more) in the market are not capable of receiving digital signals either over the air or via an MVPD. We request comment on this view.

Fact Finding Under Section 309(j)(14)(B)

48. We request comment on the extent to which the Commission is required to conduct consumer surveys or otherwise obtain information to determine whether an extension is required under section 309(j)(14)(B). In addition, we invite comment on the nature of any survey that must be performed, the type of questions that should be included, and the percent of the television households in the market that must be included in the sample. Is it necessary to survey each market separately, or would a more wide-spread survey suffice to establish that a market meets one or more of the criteria for grant of an extension request? If the first survey conducted demonstrates that an extension is warranted, when should a new survey be performed to see if there has been further transition progress in the market?

DTV Labeling Requirements and Consumer Awareness

49. As part of our commitment to continue monitoring the marketplace, we seek further comment on whether manufacturers are producing or plan to produce digital television receivers that can receive digital format transmissions via cable or satellite but that cannot receive digital broadcast signals over the air. We also seek information on the number of ''pure monitors'' (without any tuner) intended for use in display of signals from video service providers that are currently produced or planned for production. Do equipment manufacturers plan to label such equipment to describe the reception limitations or need for additional receiving equipment? What is the potential for consumer confusion in connection with these devices? Should we require labeling on pure monitors that can be used to display video services, which neither receive off-air signals, nor are designed to be ''digital cable ready,'' to advise consumers that the monitor cannot function to receive programming unless it is attached to an

off-air tuner, or cable, or satellite receiver? Should we require labeling on digital television receivers that are not ''digital cable ready'' to indicate that the set ''will not receive cable or satellite programming without the use of a converter''? We seek comment on these and other labeling options, as well as the need for and costs of such required disclosures.

50. In addition, we seek comment on whether the Commission should require a disclosure label on analog-only sets to inform consumers that a converter or external DTV tuner will be needed to ensure reception of television broadcast signals after stations in the consumer's market complete conversion to digital-only broadcasting.

Distributed Transmission Technologies

51. In the *1st R&O,* we addressed comments requesting that the Commission adopt rules for on-channel DTV boosters, including an allowance for a distributed transmission system, but deferred consideration of distributed transmission techniques until we could address the issue in a more comprehensive manner. Commenters have defined distributed transmission as being similar to a cellular telephone system in that a service area is divided into a number of cells, each served by its own transmitter. DTV boosters retransmit the primary DTV station's programming on the same channel.

52. *Primary vs. secondary status.* We have received comments suggesting that the Commission should grant primary status to the multiple transmitters in distributed transmission systems and license them under part 73 of the rules, as opposed to treating them similarly to LPTV, translator, and booster stations. We seek comment on the implications of granting primary status to DTV boosters in distributed transmission systems, and on whether we should license some categories of such stations with primary status.

53. *Location and service area.* Currently, all analog TV boosters must be located and must have a service area contained within the Grade B contour of the associated full service station. Should an equivalent requirement be established for DTV boosters used as part of a distributed transmission system?

54. *Power, antenna height and emission mask.* If multiple DTV booster stations can be used to replace, or significantly augment, a single central transmitter in a distributed transmission system, what maximum or minimum limitations, if any, should be placed on the power and/or antenna height used at each DTV booster?

55. *Interference protection.* What standards are needed to protect distributed transmission systems from interference and how should those standards be calculated and applied?

56. *Technical standards.* What standards would be appropriate for boosters in distributed transmission systems with respect to specific technical requirements, such as frequency tolerance, type certification of transmitters, control circuitry and performance measurements?

57. We seek comment generally on whether the Commission should permit the deployment of distributed transmission systems. We ask commenters to specifically address the relevant rules and policies that would have to be put in place to permit distributed transmission systems, and any new or amended forms, policies and/or procedures that would be needed with respect to the Commission's current system for filing, processing and granting television station licenses.

DTV Public Interest Obligations

58. Both Congress and the Commission have recognized that digital television broadcasters have an obligation to serve the public interest. Congress established the statutory framework for the transition to digital television in the 1996 Act, making it clear that public interest obligations would continue for broadcasters in the new digital world. In section 336 of the Act, Congress stated that ''[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity.'' The Commission also reaffirmed that ''digital broadcasters remain public trustees with a responsibility to serve the public interest,'' and stated that ''existing public interest requirements continue to apply to all broadcast licensees.'' Under our current rules, commercial television broadcast station licensees must provide coverage of issues facing their communities, and place lists of programming used in providing significant treatment of those issues (issues/programs lists) in the station's public inspection files on a quarterly basis. Licensees must also maintain in their station's public inspection files records that substantiate certification of compliance with the commercial limits on children's programming and quarterly Children's Television Programming Reports (FCC Form 398) reflecting the licensee's efforts to serve the educational and informational needs of children.

59. It is thus clear that DTV broadcasters must air programming responsive to their communities of license, comply with the statutory requirements concerning political advertising and candidate access, and provide children's educational and informational programming, among other things. What remains unresolved is how these obligations will apply in the digital environment, and whether they should be applied differently or otherwise adapted to reflect the enhancements available in digital broadcasting.

60. The Commission issued a formal Notice of Inquiry *(''NOI''),* (MM 99–360, 65 FR 4211, January 26, 2000), on DTV public interest obligations in December 1999, followed by two *NPRMs* in September, 2000 (65 FR 66951, November 8, 2000, 65 FR 62683, October 19,2000). In the *NOI,* the Commission sought comment on several issues related to how broadcasters might best serve the public interest during and after the transition from analog to digital television. Among the areas of inquiry in the *NOI* were questions regarding how broadcasters might make information about how they serve the public interest more accessible to the public.

61. The DTV Public Interest Form *NPRM* proposed that the Commission adopt rules regarding the disclosure of broadcasters' activities in the public interest, essentially putting the contents of the public file on the Internet to make it more accessible to viewers. In light of the concerns about disclosure expressed in the record of the *NOI,* the *NPRM* proposed to replace the issues/programs list with a standardized form and to enhance the public's ability to access information on a station's public interest obligations by requiring broadcasters to make their public inspection files available on the Internet.

62. The Children's DTV Public Interest *NPRM* (65 FR 66951, November 8, 2000), proposed clarifying broadcaster obligations under the Children's Television Act and related Commission guidelines in a digital television environment. This *NPRM* focused primarily on two areas: the obligation of television broadcast licensees to provide educational and informational programming for children, and the requirement that television broadcast licensees limit the amount of advertising in children's programs. It sought comment on how the current three-hour children's core educational programming processing guideline should be applied in light of the many possible ways broadcasters

may choose to use their DTV spectrum; whether the current preemption rules for core educational programming should be revised or adapted for the digital environment; and whether steps should be taken to ensure that programs designed for children or families do not contain age-inappropriate product promotions that are unsuitable for children to watch.

63. To date, the Commission has not issued any decisions in the DTV Public Interest Form *NPRM,* the Children's DTV Public Interest *NPRM,* or the NOI. Given the significant time that has passed since the comment periods in these proceedings were closed, we invite additional comment in those dockets in order to reflect more recent developments. We are particularly interested in those issues relating to the application of public interest obligations to broadcasters that choose to multicast (*e.g.*, the application of our children's television rules or the statutory political broadcasting rules in a multicast environment). We are also interested in whether our approach to multicast public interest obligations should vary with the scope of whatever final digital must-carry obligation the Commission adopts. Our goal is to bring these proceedings concerning the public interest obligations of broadcasters in the digital environment to conclusion promptly in order to provide certainty to broadcasters and the public as the digital television transition continues.

Other Issues

1. ATSC Standards

64. We hereby seek comment on whether our rules should be further changed to reflect any revisions to the ATSC DTV standard A/53B since the August 7, 2001, version.

2. PSIP

65. We seek comment on both whether to require use of PSIP and which aspects of PSIP should be adopted into our rules. If we decide not to require use of PSIP, it is, nevertheless, important to decide if some or all of the PSIP information set forth in ATSC A/65A must be used by those who voluntarily use PSIP. Likewise, are there certain aspects of the PSIP standard that should not be used or required?

3. Closed Captioning

66. We seek comment on whether there are additional actions the Commission should take to ensure the accessibility and functioning of closed captioning service for digital television.

4. V-Chip

67. We seek comment on whether the Commission needs to do more to ensure that v-chip functionality is available in the digital world. We seek comment on whether the Commission should adopt the provisions of the ATSC A/65A standard that requires all digital television broadcasters to place v-chip rating information in the PSIP.

5. TV Translators

68. We request comment on how the proper PSIP information is to be provided on TV translator rebroadcasts and who will be responsible for ensuring that that information is so provided. We also request comment regarding the costs of providing PSIP information on TV translators as well as any other concerns that translator operators might have in implementing PSIP on their DTV operations.

6. DTV Station Identification

69. In general, we propose to require digital television stations to follow the same rules for station identification as analog television stations. Recognizing that channel number identification is not currently required for all television stations by our rules, we ask whether channel identification should be required for DTV stations? If station identification announcements include channel numbers, we request comment on whether our rules should specify which channel number stations should use: the major (analog) channel number, minor (digital) channel number, or over-the-air channel number. Stations considering multicasting have raised concerns about separate identification of their separate digital programming streams for purposes of obtaining audience ratings. While we are not inclined to assign separate call signs for additional program streams for stations that choose to multicast, we propose to permit such stations to include additional information in their station announcements identifying each program stream.

7. Satellite Stations

70. Because satellite stations, by definition, operate in small or sparsely populated areas which have insufficient economic bases to support full-service operations, we seek comment on whether the public interest would be served by allowing such stations to turn in their digital authorization and ''flash-cut'' to DTV transmission at the end of the transition period. We request comment on the advantages and disadvantages of granting this special designated status to satellite stations, specifically whether it will hinder the overall transition to digital television and harm viewers by delaying their access to digital signals, or whether disallowing such status will overly burden satellite stations financially.

71. We also invite comment on whether allowing satellite stations to ''flash-cut'' to digital would present legal impediments to satisfying section 309(j)(14).

Procedural Matters

72. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See* 47 CFR 1.1202, 1.1203, and 1.1206(a).

73. *Comment Information.* Pursuant to § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 14, 2003, and reply comments on or before May 14, 2003. Comments filed addressing issues in the *DTV Public Interest Form NPRM, Children's DTV Public Interest NPRM,* and NOI proceedings should also be filed by these dates and should reference the docket numbers in those proceedings, not the docket number of this DTV periodic review proceeding. Commenters wishing to address both public interest issues and other issues raised in the DTV periodic review should put their public interest comments in a separate document to be filed in the appropriate public interest docket(s) and file their comments on other issues raised in the periodic review in the docket number of this proceeding (MB 03–15; RM 9832).

Paperwork Reduction Act

74. *Initial Paperwork Reduction Act Analysis.* This *NPRM* may contain proposed information collections subject to the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork burdens, we invite OMB, the general public, and other federal agencies to take this opportunity to comment on the information collections contained in this *NPRM,* as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on the *NPRM.* Comments should address: (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) ways to enhance the quality, utility, and clarity of the information collected; and (c) 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. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Kim Johnson, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim A. Johnson@omb.eop.gov.*

75. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM,* and they should have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Analysis

76. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM* written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for and Objectives of the Proposed Rules

77. As described in the *NPRM,* the proposed rules are required to ensure a smooth transition of the nation's television system to digital television.

Legal Basis

78. The authority for the action proposed in this rulemaking is contained in sections 4(i) and (j), 303, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 303, 307, 309 and 336.

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

79. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

80. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and therefore might be over-inclusive.

81. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

Television Broadcasting

82. The proposed rules and policies could apply to television broadcasting licensees, and potential licensees of television service. There were 1,509 television stations operating in the nation in 1992. The majority of firms can be considered small.

Cable and Other Program Distribution

83. This category includes, among others, cable operators, direct broadcast satellite (''DBS'') services, home satellite dish (''HSD'') services, multipoint distribution services (''MDS''), multichannel multipoint distribution service (''MMDS''), Instructional Television Fixed Service (''ITFS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and open video systems (''OVS''). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than $10 million in revenue. We address each service individually to provide a more precise estimate of small entities.

Cable Operators. We estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this NPRM.

Direct Broadcast Satellite (''DBS'') Service

84. There are four licensees of DBS services under part 100 of the Commission's Rules. We will assume all four licensees are small, for the purpose of this analysis.

Home Satellite Dish (''HSD'') Service

85. HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion. Most of providers of these services are considered small.

Multipoint Distribution Service (''MDS''), Multichannel Multipoint Distribution Service (''MMDS'') Instructional Television Fixed Service (''ITFS'') and Local Multipoint Distribution Service (''LMDS'')

86. MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.

87. We find that there are approximately 850 small MDS providers.

88. We tentatively conclude that at least 1,932 ITFS licensees are small businesses.

89. We conclude that there are a total of 133 small entity LMDS providers.

Satellite Master Antenna Television (''SMATV'') Systems

90. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Most providers of these services are considered small.

Open Video Systems (''OVS'')

91. The Commission has certified 25 OVS operators with some now providing service. We conclude that at least some of the OVS operators qualify as small entities.

Electronics Equipment Manufacturers

92. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. We conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers

93. We conclude that there are approximately 544 small computer manufacturers.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

94. At this time, we do not expect that the proposed rules would impose any significant additional recordkeeping or recordkeeping requirements. While the requirements proposed in the *NPRM* could have an impact on consumer electronics manufacturers and broadcasters, such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for more extensive recordkeeping and, if so, whether the burden would fall on large and small entities differently.

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

95. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

96. The deadlines we proposed for replication and maximization for in-core channels would give the largest commercial stations in the largest markets on in-core channels three years to acquire necessary financing, develop business plans, and expand their digital service areas. Taking into consideration smaller-market commercial stations, smaller commercial stations in larger markets, and noncommercial DTV licensees, which may face greater obstacles in moving towards full replication or service maximization, we proposed alternative replication and maximization deadlines allowing close to the maximum time under the current statutory transition period to complete their replication and maximization facilities. We welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such are based on evidence of potential differential impact.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

97. None.

Ordering Clause

98. Pursuant to the authority contained in sections 4(i) and (j), 303, 307, 309 and 336 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i) and (j), 303, 307, 309 and 336, this *NPRM is adopted.*

99. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

List of Subjects in 47 CFR Parts 73, 74, 76, and 90

Administrative practice and procedure, Cable television, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3812 Filed 2–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 03–14477, No. 1]

Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: The agency denies a petition for rulemaking from Mr. Ronald J. Slaughter requesting that NHTSA initiate rulemaking to consider requiring motor vehicle manufacturers to equip new vehicles with instrumentation sufficient to alert vehicle drivers and nearby police whenever the vehicles are being operated while one or more of the occupants is unbelted. Mr. Slaughter suggested that implementation of the requested amendment would lead to increases in the rate of safety belt use.

The agency is denying the petition for the following reasons. First, implementation of the requested amendment would be costly since it would necessitate the installation of seat belt use sensors, seat occupancy sensors, and light sources in each vehicle. Second, the requested amendment would have limited effect on safety belt use rates in the states whose safety belt use laws permit officers to stop a vehicle or issue a citation for failure to use a safety belt only if the officers also observe a separate concurrent violation. Third, the agency is concerned about consumer acceptance of the system proposed by the petitioner. Fourth, occupants who do not want to wear their seat belts can easily circumvent the system by placing the seat belt behind them or modifying the light to stay on all the time.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Sanjay Patel of the NHTSA Office of Crashworthiness Standards. Telephone: (202) 366–4583, facsimile: (202) 366–4329.

For legal issues, you may call Ms. Rebecca MacPherson of the NHTSA Office of the Chief Counsel. Telephone: (202) 366–2992, facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On January 25, 2000, Mr. Ronald J. Slaughter submitted a petition for rulemaking requesting that NHTSA consider requiring motor vehicle manufacturers to equip new vehicles with lights inside and outside the vehicle that would continuously burn and be visible to the driver and to those outside the vehicle as long as all vehicle occupants are belted. Mr. Slaughter believes that continuously burning lights on the instrument panel would give the driver more control over his or her passengers, reminding them to ''buckle up.'' Further, Mr. Slaughter suggested that lights visible outside the vehicle would help police officers enforce mandatory seat belt use laws. He believes that such lights would increase safety belt use, assist in the identification of drunk or otherwise

impaired drivers, and reduce traffic crash injuries and fatalities. Mr. Slaughter did not provide any data or other information relating to the cost of such devices or any studies performed regarding the effectiveness or feasibility of such a system.

NHTSA is very supportive of efforts to increase safety belt use and agrees that the failure of many motor vehicle occupants to use safety belts is a significant concern. The agency has expended considerable effort and resources to improve the rate of safety belt use in the United States. NHTSA has prepared and distributed numerous legislative fact sheets, position papers, success stories, model laws for both seat belts and child passenger safety, and other materials on the benefits of mandatory seat belt use and child passenger safety laws. Agency employees have testified, when invited by state officials, at state legislative hearings for states considering the enactment of the belt use laws.

Recently, at the invitation of state officials, NHTSA employees have testified in support of attempts within various states to change secondary enforcement laws, under which police officers must observe a separate and distinct violation before stopping a vehicle where occupants are not using belts, to primary enforcement laws. Primary enforcement laws allow police officers to make stops and issue citations for the failure to wear a seat belt without first observing another violation unrelated to seat belt use. Presently, 18 states and the District of Columbia have enacted such laws.

NHTSA has also established cooperative agreements with numerous states to demonstrate that publicized enforcement of a mandatory seat belt use law can increase seat belt use and formed formal partnerships with many national organizations for the purpose of mobilizing their membership to promote traffic safety in general, and seat belt and child safety seat use in particular. The agency has produced brochures, posters, videos, print ads, billboards, public service announcements, and a host of other media resource materials to educate the public on the safety benefits of seat belts. Other activities pursued by the agency to improve belt use include programs to improve the training of law enforcement officers, the use of child safety seat checkpoints, and other measures designed to improve belt use and enforcement of mandatory belt use laws.

Despite the agency's on-going efforts and interest in encouraging full use of vehicle safety belts, NHTSA has considered and rejected two proposals similar to Mr. Slaughter's in recent years. In both cases, the agency reluctantly concluded that the potential safety benefits of the proposed requirements were outweighed by other factors. On February 24, 1999 (64 FR 9118), the agency published a denial of a petition from Mr. Les Boyd requesting that the agency consider requiring motor vehicle manufacturers to equip new vehicles with instrumentation sufficient to alert nearby police whenever the vehicles were being operated with an unbelted occupant. In denying the Boyd petition, the agency expressed three major concerns about the general use of instrumentation to alert police. First, NHTSA explained that implementation of the requested amendment would have been costly because it would have necessitated the installation of sensors in each seating position to identify unbelted occupants as well as a transmitter in each vehicle to alert nearby police.

Second, the agency stated that it anticipated that adopting the requested requirements would lead to only a modest increase in safety belt usage in the majority of states with secondary seat belt use laws because those states only permit officers to stop a vehicle or issue a citation for an occupant's failure to use a safety belt if the officers also observe a separate, concurrent violation. The agency further stated that it did not anticipate that granting Mr. Boyd's petition would lead to a substantial increase in seat belt use even in those states whose mandatory seat belt use laws permit officers to enforce those laws without first observing a separate, concurrent violation. Third, NHTSA expressed reservations about the amount of identifying information that would need to be transmitted in order for police to determine which vehicles were being operated with unbelted occupants, stating that the transmission of such detailed information raised significant privacy concerns.

On November 5, 1999 (64 FR 60625), the agency denied a petition from Carl Nash and Donald Friedman. The petitioners proposed requiring certain inducements to fasten all occupant safety belts, such as continuous visual reminders, audible suggestions, or interruption of non-essential accessories such as air conditioning. In denying the petition, the agency expressed concerns about the effectiveness of continuous visual reminders, pointing to a lack of ''information indicating that such a reminder would likely result in additional safety benefits over the existing warning systems.'' The agency also stated its opinion that NHTSA lacks the statutory authority to require audible suggestions or system interruption. The agency reconfirmed this opinion in the preamble to the Advanced Air Bag final rule, published on May 12, 2000 (65 FR at 30734), as well as in a letter to Dr. Nash on June 6, 2000.

In evaluating Mr. Slaughter's petition, we believe that there is no apparent reason to require continuously burning lights to indicate that all occupants are belted. First and foremost, there are no data relating to the costs of such a system or any studies indicating its effectiveness or feasibility. With respect to the petitioner's proposal to require a continuously burning light positioned outside the vehicle, the agency believes that doing so would be unlikely to enhance appreciably the ability of police officers to determine whether occupants are wearing their safety belts. In many cases, officers can already see whether an occupant's shoulder belt is being worn by looking through the vehicle's windows. We acknowledge that an illuminated, external light would be more effective than plain visual inspection in certain circumstances, however, such as at night, during periods of inclement weather, or in other situations when visibility is severely limited.

As to Mr. Slaughter's proposal to require a continuously burning light inside the vehicle, on the dashboard, we note that the agency presently requires vehicles to be equipped with an internal light and an audible warning to remind the vehicle's driver to fasten his or her safety belt. (*See* Federal Motor Vehicle Safety Standard No. 208, paragraph S7.3.) This light normally remains illuminated when the driver's safety belt is not being worn. The agency believes that the combined effect of requiring an audible warning system and dashboard light inside the vehicle keyed to the driver's seating position, coupled with the ability of police offers to observe (in normal driving conditions) from outside the vehicle, whether shoulder belts are being worn already provides many of the ''reminder'' and enforcement benefits the petitioner contends would be realized by his proposal.

Not only would the benefits from adopting the petitioner's proposal appear to be minimal, but also the costs of requiring manufacturers to install continuously burning lights inside and outside the vehicle would likely be high. To work in the manner suggested by the petitioner, each seating position would not only need a belt-use sensor in every safety buckle, but every seating position other than the driver's seat would also have to have some form of seat sensor to indicate whether the seat

was occupied. Each vehicle would also need to be equipped with a wiring harness and internal and external lights, designed to illuminate only when the safety belts in all ''occupied'' seats registered as fastened. Based on the comparatively simpler weight sensors and wiring harnesses used in the BMW advanced air bag system, the agency estimates that the minimum cost for a vehicle with five seating positions would be at least $50 per vehicle. Substantially greater costs would be incurred in vehicles with more seating positions and/or vehicles with readily removable seats.

In addition to the potentially high cost of the petitioner's proposal, the agency is also concerned about consumer acceptance of such a system. Vehicle seats, especially rear seats, are frequently used to transport cargo such as groceries, luggage, pets, and other heavy objects. If the system were to work as envisioned by the petitioner, the mere placement of such items on a vehicle's seat coupled with a failure to fasten the associated belt would prevent the continuously burning lights from illuminating, thus indicating falsely to police officers that the vehicle was being operated with unbelted ''occupants.'' Such ''false alarms'' would likely lead to widespread consumer backlash and disapproval. Other ''false alarms'' could occur when the light bulbs burn out and need to be replaced by the consumer. Occupants who do not want to wear their seat belts can also easily circumvent the system by placing the seat belt behind them or modifying the light to stay on all the time.

Finally, we note that Congress has requested that NHTSA conduct a study to consider whether unobtrusive technologies could increase belt use. In response, NHTSA has contracted with the Transportation Research Board of the National Academy of Sciences to conduct a study on the benefits and acceptability of these technologies, as well as any legislative or regulatory actions that may be necessary to enable installation of devices to encourage seat belt use in passenger vehicles. In conjunction with this study, NHTSA is also conducting research to determine what levels of intrusiveness would induce non-belt users to wear their seat belt, without causing adverse reactions from current belt users.

For the reasons stated above, NHTSA concludes that it is unlikely that a rulemaking proceeding to require continuously burning lights inside and outside the vehicle tied to safety belt usage as suggested by the petitioner would result in the issuance of a rule requiring such a device. Accordingly, the petition is denied. Upon completion of the National Academy of Sciences' and our own studies, we will consider what future action the agency will take on this issue.

Authority: 49 U.S.C. 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued: February 10, 2003.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 03–3832 Filed 2–14–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020503A]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Scoping Process

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of scoping meetings; request for comments.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils (Councils) announce their intention to jointly prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures for managing the spiny dogfish (*Squalus acanthias*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The Councils are developing Amendment 1 to the Spiny Dogfish Fishery Management Plan (FMP) to address rebuilding targets and timeframes, methods to estimate discard mortality and reduce discarding, the quota allocation scheme, and potentially other management measures as well. This notification announces a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to management of spiny dogfish. The intended effect of this notification is to alert the interested public of the scoping process and to provide for public participation.

DATES: Written comments on the intent to prepare an EIS must be received on or before 5 p.m., local time, April 4, 2003. A public scoping meeting will be held on Monday, March 17, 2003, at 7:00 PM.

ADDRESSES: Written comments on the intent to prepare the EIS and requests for the scoping document or other information should be directed to Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904, (Phone 302–674–2331). Comments may also be sent via facsimile (FAX) to (302) 674–5399. Comments will not be accepted if submitted by e-mail or Internet.

A scoping hearing will be held at 7:00 PM on March 17, 2003 at the Sheraton Oceanfront Hotel (36th Street & Atlantic Ave.), in Virginia Beach, VA.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, telephone (302) 674–2331.

SUPPLEMENTARY INFORMATION:

Fishery Management Unit

The management unit is all Atlantic spiny dogfish (Squalus acanthias) in U.S. waters in the western Atlantic Ocean.

Problems Discussed For this Amendment

1. Define a rebuilding biomass target and agecomposition

Currently, there is no rebuilding target for the spiny dogfish stock because the rebuilding target established in the original FMP was disapproved. It will be necessary to establish a new target that will identify the stock size that corresponds to a recovered spiny dogfish stock as defined under the MSFCMA. Examples of rebuilding targets are BMSY (population biomass (B) that supports Maximum Sustainable Yield (MSY)) and SSBmax (female Spawning Stock Biomass (SSB) that maximizes recruitment). Additionally, identification of a target age structure for the rebuilt stock has been suggested. Target age compositions proposed thus far include those corresponding to (1) the average from 1980–88 and (2) the average from 1989–93.

2. Choose a rebuilding timeframe consistent with National Standards Guidelines

The National Standards Guidelines of the MSFCMA provide minimum and maximum time limits for rebuilding fish stocks that are classified as overfished. The lower limit of the specified time period for rebuilding is the amount of time that would be required for rebuilding if fishing mortality were

eliminated (50 CFR 600.310(e)(4)(ii)(B)(3)). The longest amount of time allowed for rebuilding is the amount of time required to rebuild the stock with no fishing mortality plus one mean generation time. Other potential rebuilding time frames include those consistent with a constant fishing mortality rate of F = 0.03, a constant harvest strategy of 8.8 million pounds, and one mean generation time.

3. Evaluate new methods to estimate discards and discard mortality as well as develop management options to reduce discards in other fisheries

The Dogfish Monitoring Committee concluded at its September 2002 meeting that discard mortality may be compromising the fishery's ability to achieve the FMP objective of rebuilding female spawning stock biomass. The Committee strongly recommended increased observer coverage to allow reliable estimation of discards and additional studies to estimate discard mortality rate by gear type. The mortality of dogfish discarded in other fisheries could be greater than that which will allow stock rebuilding. If this is the case, additional constraints on the fisheries which land and discard dogfish should be considered (e.g., time-area closures).

4. Establish a new quota allocation scheme

The current quota allocation scheme designates 57.9 percent of the annual quota to period 1 (May–October) and 42.1 percent to period 2 (November–April). This scheme may be modified in order to simplify the allocation process and/or distribute harvest more evenly over the course of the year. Alternatives to the current scheme include but are not limited to a 50:50 split between quota periods 1 and 2, alternative seasons (i.e., monthly, bimonthly, quarters), changing the fishing year to be consistent with the calendar year, and adding a provision for overages.

5. Other management concerns

A number of additional management measure changes could be considered in the development of Amendment 1. These modifications could include changing the specification of management measures from an annual to a multiple year approach, adding quota set-asides for biological supply and/or biomedical research, limited access options, establishing a percentage of the quota for research set-asides, allocating the quota regionally or state-by-state, establishing a maximum size or slot sizes, and managing the Northwest Atlantic spiny dogfish resource in cooperation with Canada.

Possible Management Measures

Commercial Fishery Management Measures

Possible management measures for the commercial fishery include:

Discard Monitoring Program	X
Closed seasons	X
Closed areas	X
Regional Quota Allocation	X
Minimum/Maximum Size Limits	X
Trip limits	X
Limited Access	X

Recreational Fishery Management Measures

Possible management measures for the spiny dogfish recreational fishery include:

Discard Monitoring Program	X
Closed seasons	X
Closed areas	X
Minimum/Maximum Size Limits	X
Trip limits	X

Public Scoping Meeting Schedule

A scoping meeting will be held as follows:

7:00 PM March 17, 2003 at Sheraton Oceanfront Hotel, 36th Street & Atlantic Ave. Virginia Beach, VA 23451 Tel: 757–425–9000

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council, telephone (302) 674–2331, at least 5 days prior to the scoping meeting.

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

Dated: February 11, 2003.

Richard W. Surdi,

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

[FR Doc. 03–3845 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030128021–3021–01; I.D. 121602A]

RIN: 0648–AQ45

Fisheries of the Exclusive Economic Zone Off Alaska; Opening Waters to Pacific Cod Pot Fishing off Cape Barnabas and Caton Island

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

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to open waters to Pacific cod pot fishing around Cape Barnabas and Caton Island located in the Gulf of Alaska (GOA). Waters out to 3 nautical miles (nm) around these sites are currently closed to Pacific cod fishing by federally permitted vessels as a Steller sea lion protection measure. State of Alaska regulations do not implement these same closures in State waters. This action is necessary to provide consistency between State and Federal fishing restrictions and to relieve a potential burden on the Pacific cod pot fishing sector. The regulatory amendment is intended to meet the objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments on the proposed rule must be received on or before March 20, 2003.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or delivered to the Federal Building, 709 W 9th St., Juneau, Alaska. Comments may also be faxed to 907–586–7557, marked Attn: Lori Durall. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action and the Steller sea lion supplemental environmental impact statement (SEIS) may also be obtained from the same address, from the Alaska Region, NMFS, Web site at *http://www.fakr.noaa.gov*, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, (907) 586–7228 or melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

At its October 2001 meeting, the Council recommended Steller sea lion (SSL) protection measures for 2002 and beyond. These measures were developed by a Council-appointed committee (hereafter referred to as the SSL Committee but was formerly called the ''RPA Committee''). In developing its recommendations, the SSL Committee first assessed the needs of Steller sea lions to avoid jeopardy to their continued existence or destruction or adverse modification of their critical habitat based on the best scientific information available. The SSL Committee then crafted groundfish fisheries management measures that provided adequate protection for Steller sea lions in compliance with the Endangered Species Act (ESA).

These recommendations included a revised harvest control rule for pollock, Pacific cod, and Atka mackerel; closed areas and seasons based on the location, fishery, and gear type; critical habitat harvest limits for the pollock and Atka mackerel fisheries in certain areas of critical habitat; and requirements to allow for monitoring of pollock, Pacific cod, and Atka mackerel directed fishing. The recommendations of the SSL Committee were further modified by the Council. The complete set of recommendations by the Council is detailed in the preamble to the emergency interim rule implementing Steller sea lion protection measures and groundfish harvest specifications in 2002 (67 FR 956, January 8, 2002).

NMFS formally consulted under section 7 of the ESA on the Steller sea lion protection measures. A biological opinion (2001 BiOp) was appended to the Steller sea lion SEIS which evaluated the effects of the preferred alternative on ESA listed species (see **ADDRESSES**). The agency determined in the 2001 BiOp that the protection measures proposed by the Council were not likely to jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or result in the destruction or adverse modification of its critical habitat. Based on the 2001 BiOp and the environmental impacts disclosed in the Steller sea lion SEIS, the Council adopted the preferred alternative (with modifications) and forwarded it to NMFS for approval and implementation. NMFS implemented the preferred alternative by emergency interim rule prior to the start of the 2002 fishing year (67 FR 956, January 8, 2002, amended 67 FR 21600, May 1, 2002, 67 FR 45671, July 10, 2002, 67 FR 47472, July 19, 2002, and extended 67 FR 34860, May 16, 2002). These protection measures were published as a proposed rule for 2003 and beyond (67 FR 56692, September 4, 2002) and the final rule became effective January 1, 2003 (68 FR 204, January 2, 2003).On December 18, 2002, the United States District Court for the Western District of Washington remanded to NMFS the biological opinion (''2001 BiOp'') NMFS prepared for the groundfish fisheries managed pursuant to the Stellar sea lion protection measures published on January 2, 2003 (68 FR 204). Greenpeace, et al. V. National Marine Fisheries Service, No. C98–492Z (W.D. Wash.). The Court held that the biological opinion's findings of no jeopardy to the continued existence of endangered Stellar sea lions and no adverse modification of their critical habitat were arbitrary and capricious. On December 30, 2002, the Court issued an Order declaring that the 2001 BiOp ''shall remain effective until June 30, 2003,'' while NMFS complies with the remand.

In order for the Steller sea lion protection measures to be fully implemented, in November 2001, the State of Alaska Board of Fisheries (BOF) adopted parallel regulations providing for an extension of Steller sea lion protection measures in State waters (0–3 nm) during the State parallel fishery. The parallel groundfish fishery is defined as the Pacific cod, walleye pollock, and Atka mackerel fisheries in State waters opened by the Commissioner of the Alaska Department of Fish and Game (ADF&G). The opening was effected under emergency order authority to correspond with the times, area, and, unless otherwise specified, the gear of the Federal season in adjacent Federal waters (Alaska Administrative Code 5 AAC 28.087(c), January 3, 2002).

As part of its November 2001 action, the BOF adopted a series of fishery closure areas that almost mirrored those areas requested by the Council under the Steller sea lion protection measures. The Federal regulations (implementing the Council's preferred alternative) contained closures for Pacific cod fisheries using pot gear at Caton Island (King Cove area) and Cape Barnabas (Kodiak) within 3 nm of those ESA listed haulouts. However, the BOF action did not contain these closures for the parallel fishery, and this allowed vessels without a Federal fishing permit to fish in those areas under Alaska State law. This resulted in conflicting Federal and State regulations. In November 2001, NMFS informally consulted on allowing Pacific cod fisheries using pot gear at Caton Island and Cape Barnabas within 3 nm of those ESA listed haulouts and determined that these changes to the Steller sea lion protection measures were not of sufficient extent to re-initiate formal ESA consultation.

In October 2002, the Council recommended proposed regulations to remove Pacific cod pot fishing restrictions in waters within 3 nm of Cape Barnabas and Caton Island for federally permitted vessels. These proposed regulations remove the restrictions from Table 5 of part 679 for these two locations.

Classification

NMFS has determined that the opening of closed Pacific cod pot fishing within 3 nm miles of Caton Island and Cape Barnabas is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Under Executive Order 12612, this proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment. Because no federalism issues are implicated with this action, the mandatory requirements contained in Executive Order 13132 for consultation on federalism issues among Federal, State, and local governments are not triggered.

Nothing in this action results in any changes in reporting or recordkeeping requirements.

Species listed under the Endangered Species Act (ESA) are present in the action area. This action is not expected to result in increases of Pacific cod harvest beyond those experienced with the opening of the State parallel fishery in these areas. With no additional removals of Pacific cod expected, informal ESA consultation concluded that this action is not likely to adversely affect listed species.

The analysis for this action did not reveal any existing Federal rules that duplicate, overlap, or conflict with this action.

NMFS prepared an IRFA that describes the impact this action may have on small entities. Earlier sections of this preamble describe the reasons

why action by the agency is being considered and provide a succinct statement of the objectives of, and the legal basis for, the proposed rule. This action is expected to affect six regulated small entities by removing a fishing restriction. These entities are the pot vessels fishing for Pacific cod in the waters within 3 nm of the two haulouts. This action does not impose new reporting, recordkeeping or other compliance requirements on regulated small entities. No Federal rules exist that duplicate, overlap or conflict with the proposed rule. This action does not have any adverse impacts on regulated small entities. No significant alternatives to the proposed rule exist that would have lower economic impacts on these entities.

Two alternatives were considered for the Caton Island and Cape Barnabas pot fishing vessels: (1) No exemption for these vessels (status quo) and (2) exempt pot fishing vessels from SSL closures from 0 to 3 nm around Caton Island and Cape Barnabas.

Alternative 1 is the baseline alternative, and federally permitted vessels using pot gear for Pacific cod directed fishing would continue to be prohibited from fishing within 3 nm of the Caton Island and Cape Barnabas haulouts. Also, the status quo would not provide consistency between Federal and State regulations governing fishing restrictions within Steller sea lion protection areas. The preferred alternative would allow federally permitted vessels used to participate in the GOA Pacific cod pot fishery to fish within 3 nm of the haulouts at Caton Island and Cape Barnabas. This would reduce the Pacific cod revenues placed ''at risk'' by the restrictions of the status quo alternative by up to $63,000. The areas in question are small parts of larger fishing areas, and fishermen may currently be making up a large part of the harvest foreclosed by the restrictions by fishing elsewhere. This alternative is not believed to create jeopardy for the Steller sea lions or adversely modify its critical habitat. This alternative would not trigger Executive Order 12866 significance criteria since the maximum revenue impact is likely to be $63,000 at the outside.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 6, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Table 5 to Part 679 [Amended]

2. Table 5 to part 679 is revised as follows:

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20, 3		
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20, 3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3
Kiska I. Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	3		
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	BA	BA
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	10	20
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	BA	BA
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20		
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long. Amlia I./East, and Tanadak I. (Amlia) haulouts 20 nm hook-and-line and pot closures apply only to waters located east of 173° W longitude.

[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.

[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.
[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.
[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.
[9]Restriction area includes only waters of the Gulf of Alaska Area.
[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.
[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock applies only to waters west of 178°W long. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts.
[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.
[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.
[14]Trawl closure around this site is limited to waters east of 170°0'00" W long.

[FR Doc. 03–3589 Filed 2–14–03; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 32
Tuesday, February 18, 2003

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. 03–020–1]

Availability of an Environmental Assessment for Licensing of Brucella Abortus Vaccine, Strain RB–51, Live Culture

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the licensing of Brucella Abortus Vaccine, Strain RB–51, Live Culture. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the licensing of this vaccine, examines the potential effects that the licensing of this veterinary vaccine could have on the quality of the human environment. Based on the environmental assessment, we have reached a preliminary determination that the licensing of this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to issue a U.S. Veterinary Biological Product license for this vaccine for use in cattle after the close of the comment period for this notice unless new, substantial issues bearing on the effects of this action are brought to our attention.

DATES: We will consider all comments that we receive on or before March 20, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–020–1, 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. 03–020–1. If you use 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. 03–020–1'' on the subject line.

You may request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed) by writing to Dr. Connie S. Smellich-Sandage, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010, or by calling (515) 232–5785. Please refer to the docket number, date and complete title of this notice when requesting copies.

A copy of the environmental assessment (as well as the risk analysis with confidential business information removed) and any comments that we receive on this docket are available for public inspection 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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road, Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the environmental assessment or the risk analysis, contact Dr. Connie S. Smellich-Sandage, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010; (515) 232–5785.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. In determining whether to issue a veterinary biological product license for the vaccine referenced in this notice, APHIS conducted a risk analysis to assess the potential effect of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the licensing of the following product:

Requester: Colorado Serum Company.

Product: Brucella Abortus Vaccine, Strain RB–51, Live Culture, Code 1261.00.

Action: Issuance of product license.

The above-mentioned vaccine is for use in cattle as an aid in the prevention of clinical signs due to *Brucella abortus.* The vaccine is prepared from a naturally occuring, rifampicin resistant mutant strain of the organism.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

We have reached a preliminary determination that the licensing of this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact based on the EA and issue a veterinary biological product license for this vaccine following the close of the comment period for this notice.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 11th day of February, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3838 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–010–1]

Big Cat Symposia; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is a notice to animal exhibitors, dealers, transporters, researchers, animal protection groups, industry groups, and other interested persons that we are holding a series of educational symposia to present current information on the care and maintenance of exotic big cats. This notice provides the agenda for the symposia, information on the location and dates of the first two symposia, and general information on subsequent symposia.

DATES: The first symposium will be held in Fort Worth, TX, on Wednesday, March 26, 2003. The second symposium will be held in Las Vegas, NV, on Wednesday, April 30, 2003. Each symposium will be held from 8 a.m. to 5 p.m. Preregistration is requested for both symposia. Parties wishing to attend may preregister by e-mailing *ACE@aphis.usda.gov* or by calling the Animal Care headquarters office at (301) 734–7833. The preregistration deadline for the Fort Worth meeting is March 1, 2003; for the Las Vegas meeting, the deadline is April 1, 2003.

On-site registration will take place from 7:30 a.m. to 8:30 a.m. on the day of each symposium.

ADDRESSES: The symposia will be held at the following locations:

1. Fort Worth, TX: Ramada Plaza Hotel, 1701 Commerce Street, Fort Worth, TX 76102, (817) 335–7000.
2. Las Vegas, NV: Sam's Town Hotel, 5111 Boulder Highway, Las Vegas, NV 89122, (800) 897–8696.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda of the symposia, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. Dr. Kohn may be contacted by e-mail at *ACE@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is announcing a series of educational symposia on the care and maintenance of exotic big cats. The symposia will give Animal Care an opportunity to disseminate information on various topics that are key to the successful management and handling of exotic big cats. The symposia will be held in various geographical locations to facilitate attendance by regulated parties that maintain these animals.

The first symposium will be held on Wednesday, March 26, 2003, at the Ramada Plaza Hotel, Fort Worth, TX, and the second symposium will be at Sam's Town Hotel, Las Vegas, NV, on April 30, 2003. We plan to hold similar symposia at some time between October 2003 and January 2004 in the Midwest, Washington, DC, and Florida.

The symposia have been developed to provide current information and ideas on a variety of topics. Each symposium will follow the same agenda, with possible minor modifications. The symposia will start with general sessions, followed by breakout sessions allowing more interaction between speakers and attendees. The agenda for these symposia is:

7:30 a.m.–8:30 a.m.—Registration.
8:00 a.m.–11:30 a.m.—General Session.
Welcome.
Nutrition.
Veterinary Care and Tranquilization.
Transportation.
New Training Methods.
11:30 a.m.–1 p.m.—Lunch Break.
1:00 p.m.–2:30 p.m.—Concurrent Breakout Session #1.
Explaining APHIS Regulations.
Nutrition/Zootrition.
Heat Budgets and Shade (avoiding overheating and overcooling).
2:45 p.m.–4:15 p.m.—Concurrent Breakout Session #2.
Training.
Transportation Issues.
Fixed Exhibit Enclosure Design.
4:15 p.m.–5:00 p.m.—Questions and Answers; Closing.

Notices of these symposia are being sent to current Animal Welfare Act licensees with exotic big cats. This notice is also available on the Internet at *http://www.aphis.usda.gov/ac,* the Animal Care web site. Copies of a brochure containing the information in this announcement can also be requested by calling the Animal Care headquarters office at (301) 734–7833 or by e-mailing a request to *ACE@aphis.usda.gov.*

Please note that these symposia are being held to provide and disseminate information on the care and maintenance of big exotic cats under the Animal Welfare Act. There will be no opportunity at these symposia to submit formal comments on proposed rules or other regulatory initiatives.

Preregistration

Preregistration is requested by calling the Animal Care headquarters office at (301) 734–7833 or by e-mailing Animal Care at *ACE@aphis.usda.gov* and providing your name, number of attendees, phone number, and e-mail address or other contact address. This information is needed so we may inform registrants in a timely manner if any changes are made to the schedules of the symposia. Please preregister for the Fort Worth symposium by March 1, 2003, and for the Las Vegas symposium by April 1, 2003.

Travel and Lodging Information

All attendees are responsible for their own travel and lodging. No rooms have been reserved for attendees at the symposium hotels or any other hotels.

Done in Washington, DC, this 11th day of February, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–3837 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, April 8, 2003. The purpose of the meeting is to provide orientation to Advisory Committee members, and to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held April 8, 2003.

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the

Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 7 will have the opportunity to address the Committee at those sessions.

Dated: February 7, 2003.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 03–3809 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Lingle-Ft. Laramie Water Quality Project, Goshen County, WY

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lingle-Ft. Laramie Water Quality Project, Goshen County, Wyoming.

FOR FURTHER INFORMATION: Contact Lincoln E. Burton, State Conservationist, Natural Resources Conservation Service, Room 3124, Federal Building, 100 East B Street, Casper, Wyoming 82601, telephone (307) 261–6453.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the human environment. As a result of these findings, Lincoln E. Burton, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is watershed protection—the on-site treatment of agricultural related pollutants for off-site benefits. The planned works of improvement include accelerated technical assistance for land treatment, accelerated financial assistance to treat 8,300 acres to reduce the amount of nitrogen available to be leached to the groundwater, 25 animal waste management facilities, and 35 abandoned wells will be decommissioned.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency (EPA) and to various federal, state, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lincoln E. Burton.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.** The Environmental Assessment will then be signed and funding authorization requested. All plans will be written within five years, and implementation will continue for up to ten years.

Dated: January 22, 2003.

Lincoln E. Burton,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Finding of No Significant Impact for Lingle-Ft. Laramie Water Quality Project, Goshen County, Wyoming

Introduction

The Lingle-Ft. Laramie Water Quality Project is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies, including section 7 consultation, as well as with interested organization and individuals. Data developed during the assessment is available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Room 3124 Federal Building, 100 East B Street, Casper, Wyoming 82601–1969.

Recommended Action—Alternative 2: Accelerated Land Treatment

Proposed is the development of about 48 conservation plans that will provide for land treatment measures to be applied on farms for the reduction of the agricultural contribution to nitrate contamination of the groundwater. The proposed plan will treat 8,300 acres with increased irrigation efficiency to reduce the amount of nitrogen available to be leached to the groundwater. Twenty-five animal waste management facilities and application practices will be installed in the watershed. Thirty-five abandoned wells will be decommissioned.

Effect of Recommended Action

The recommended action will improve groundwater quality, improve human health and safety, improve irrigation efficiency, and reduce irrigation labor. Nitrates available for leaching will be reduced through installation of fertilizer injection systems, nutrient management, and irrigation water management.

The proposed action will reduce the amount of nitrogen available to be leached. It is estimated at full implementation, there will be a 33 percent reduction of nitrate leached below the root zone, which equals about 81 pounds of nitrate per acre each year over the entire project area at a 60% participation rate. Nitrogen reduction is considered not to be a controversial issue.

The proposed action will install twenty-five animal waste management systems to collect and store run-off from feed lots until it can be safely applied to the agricultural fields.

The proposed action will improve on farm irrigation efficiency, which will increase the water available to meet crop consumptive use.

A literature review and search of the State Historic Preservation Office (SHPO) records were conducted for the project area. The effect of project installation will be determined for each individual project contract according to Natural Resource Conservation Service, Northern Plains Region procedures.

It is likely that more sites will be discovered during the planning and installation of the accelerated land treatment practices. Since project practices will be installed on a ''voluntary participation'' basis, location of ground disturbances is presently unknown. Most surface disturbances below the plow zone will occur as a result of installing ag waste facilities, pipelines, land leveling, grading, and shaping. NRCS cultural resources procedures, as described in the NRCS Northern Plains Region procedures, will be followed when ground disturbances are planned.

Compliance with National Environmental Policy Act (NEPA) protection rules for each farm will follow the procedures in the NRCS General Manual, Section 190 and 420, respectively.

The proposed action will have little or no effect on wetlands. With on farm improved irrigation efficiencies some reduction in tail water run-off will occur, but with the sandy soils in the watershed most of the run-off has gone to groundwater and not surface water. Wetland restoration, creation and enhancement will increase a total of about 24 acres as operator's contracts are developed. A 2 acre-foot depletion will be offset by a debit from the National Fish and Wildlife Foundation account.

No wilderness areas are in the watershed.

There is potential habitat for the threatened Ute ladies' tresses (Spiranthes diluvialis) and Preble's meadow jumping mouse (Zapus hudsonius preblei), but none have been identified within the watershed, the determination of ''may affect, but not likely to adversely affect'' was arrived at with section 7 consultation. The habitat will not be adversely impacted. There are no known resident threatened or endangered animals within the watershed area.

The proposed action will increase vegetative cover suitable for wildlife as a result of the application of conservation practices that include vegetative components. Fish habitat will not be affected.

The proposed action will not disproportionately affect any protected groups.

No significant adverse environmental impacts will result from installation of the proposed action.

Alternatives

Based on the above summary of effects (as discussed in the EA), I have determined the alternative which I have selected, will not have significant effect on the human environment. For that reason, no environmental impact statement needs to be prepared.

The planned action is the most practical means of reducing the agricultural contribution of nitrate to the groundwater. Because no significant adverse environmental impacts will result from the installation of the on farm conservation measures, no other alternatives, other than the no action alternative, were considered.

Consultation—Public Participation

On June 17, 1996, the North Platte Valley Conservation District, and the Lingle-Fort Laramie Conservation District Boards of Supervisors, filed an application for PL 83–566 assistance in developing a plan for the Goshen County, Lingle-Ft. Laramie Water Quality Project. The State of Wyoming Governor's Office referred the application to the Wyoming Board of Agriculture for ranking and approval. On September 18, 2000, the board gave the project a ranking of high and approved the request to be submitted to the NRCS. Acceptance was acknowledged by the State Conservationist, and appropriate agencies and Sponsors were notified. The town of Torrington and the Goshen County Commissioners were later added to the list of Sponsors.

The Sponsors held two interagency and two public meetings to determine the extent of the problem. The Sponsors requested that NRCS analyze alternative solutions and prepare a preliminary investigation report. In September 2000, a preliminary investigation report was completed for the Lingle-Ft. Laramie Water Quality Project.

Numerous newspaper articles, newsletters, and radio public service announcements, have been aired in order to provide public information. Public meetings with the news media in attendance were held to gain public input and inform the public.

On October 24, 1996, an interagency meeting was held to determine concerns of the other agencies.

June 14, 2000, a public scoping meeting was held to determine public concerns and opinions. A public response analysis was completed on the responses.

On October 18, 2000, another public meeting was held to review the alternatives developed and obtain further public input.

On June 11, 2001, the Sponsors met to review the Draft Plan-EA.

On July 25, 2002, the Sponsors held a public meeting to begin the Public/Interagency review of the Draft Plan-EA. Written comments were requested from agencies, organizations, and groups identified in the planning process as interested. The comments were reviewed and responses prepared on each comment. The comments and responses are contained in the Final Plan Environmental Assessment.

Written comments were requested from 70 agencies, organizations, and groups identified in the planning process.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan. Section 7 consultation has been completed and incorporated.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Lingle-Ft. Laramie Water Quality Project Plan is not required.

Additional Information or questions can be directed to: George W. Cleek IV, Assistant State Conservationist, USDA–NRCS, 100 East B Street, Room 3124, Casper, WY 82601–1969, Phone: 307–261–6457, E-mail: *george.cleek@wy.usda.gov.*

Dated: January 22, 2003.

Lincoln E. Burton,

State Conservationist.

[FR Doc. 03–3781 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper Knapps Creek Watershed Natural Stream Restoration Demonstration Project, Pocahontas County, WV

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Knapps Creek Watershed Natural Stream Restoration Demonstration Project, Pocahontas County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Lillian V. Woods, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone (304) 284–7545.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lillian V. Woods, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to restore natural channel geometry and profile to

impaired segments of Upper Knapps Creek in Pocahontas County, West Virginia, and to provide the interested public the opportunity to observe techniques utilized and results obtained.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lillian V. Woods.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(*This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials)

Lillian V. Woods,

State Conservationist.

[FR Doc. 03–3783 Filed 2–14–03; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on Thursday, March 20, 2003, at the Doubletree Hotel, 424 West Markham, Little Rock, Arkansas 72201. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Farella E. Robinson of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–3855 Filed 2–14–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet March 4, 2003, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Update on Wassenaar Arrangement proposals.
5. Discussion on status of encryption regulation recommendations.
6. Discussion of deemed export license conditions and process review.
7. Discussion on status of Automated Export System regulations and related Customs Service proposals.
8. Working group status reports and discussion of future plans.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto, and of matters the disclosure of which would be likely to frustrate the implementation of agency action as described in 5 U.S.C. 552b(c)(9)(B).

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 11, 2003, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) and the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate the implementation of agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: February 12, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–3811 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–875]

Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China

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

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Trentham or Sam Zengotitabengoa, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–6320, and (202) 482–4195, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that non-malleable cast iron pipe fittings (pipe fittings) from the People's Republic of China (PRC) are

being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the ''Final Determination of Investigation'' section of this notice.

Case History

On September 25, 2002, the Department of Commerce (the Department) published the preliminary determination of sales at LTFV in the antidumping duty investigation of pipe fittings from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 67 FR 60,214 (September 25, 2002) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

On September 30, 2002, and October 1, 2002, respectively, Jinan Meide Casting Co., Ltd. (JMC) and Shanghai Foreign Trade Enterprises Co., Ltd. (SFTEC) (the respondents) filed preliminary determination clerical error allegations. The Department concluded that certain allegations constituted ministerial errors, to be corrected in the final determination, but that the errors did not amount to significant ministerial errors for purposes of issuing an amended preliminary determination. *See* Ministerial Error Allegations Memorandum, from Holly A. Kuga to Bernard T. Carreau, dated November 4, 2002 (Ministerial Error Allegations Memorandum). From October 25, 2002, through November 5, 2002, the Department conducted a sales and factors of production verification of JMC and SFTEC. *See* Memorandum to the File from the Team, Verification of Sales Information Reported by Jinan Meide Casting Co., Ltd., to the file, dated December 4, 2002; Memorandum to the File from the Team, Verification of Sales Information Reported by Shanghai Foreign Trade Enterprises Co., Ltd., to the file, dated December 4, 2002; Memorandum to Neal M. Halper from the Team, Verification Report on the Factors of Production Data Submitted by Jinan Meide Casting Co., Ltd., dated December 11, 2002 (JMC FOP Verification Report); and Memorandum to Neal M. Halper from the Team, Verification Report on the Factors of Production Data Submitted by Shanghai Foreign Trade Enterprises, Ltd., and its Suppliers, dated December 11, 2002 (SFTEC FOP Verification Report). SFTEC filed surrogate value information and data on September 11, 2002, and November 25, 2002. JMC filed available surrogate value information and data on November 4, 2002, and the petitioners[1] filed surrogate value information and data on November 1, 2002. On October 25, 2002, SFTEC filed a request for a public hearing in this investigation, and JMC and the petitioners filed a request to appear and participate at a hearing if one was requested by another party. SFTEC withdrew its request for a hearing on January 7, 2003. The respondents filed case briefs on December 23, 2002, and the petitioners filed a case brief on December 24, 2002. The respondents and the petitioners filed rebuttal briefs on January 3, 2003. In response to requests, we held meetings with the petitioners, on January 14, 2003, JMC, on February 4, 2003, and SFTEC, on February 5, 2003, during which the party in question highlighted issues raised in its briefs.

Scope of the Investigation

For purposes of this investigation, the products covered are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from 1/4 inch to 6 inches, whether threaded or un-threaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as ''cast iron pipe fittings'' or ''gray iron pipe fittings.'' These cast iron pipe fittings are normally produced to ASTM A-126 and ASME B.l6.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A-395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of this petition. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (AWWA) specifications AWWA C110 or AWWA C153 are not included.

Imports of covered merchandise are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60 and 7307.19.30.85. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Investigation (POI)

The POI is July 1, 2001, through December 31, 2001.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration (Decision Memorandum) dated February 7, 2003, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B-099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Non-Market Economy

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115 (November 20, 2001). An NME country designation remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as a NME country in this investigation. For further details, see the *Preliminary Determination*.

[1] The petitioners in this case are Anvil International, Inc. and Ward Manufacturing, Inc. (collectively referred to as the Petitioners).

Separate Rates

In our *Preliminary Determination*, we found that both responding companies, JMC and SFTEC, met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the preliminary determination which would warrant reconsideration of our separates rates determination with respect to these companies. For a complete discussion of the Department's determination that the respondents are entitled to a separate rate, see the *Preliminary Determination*.

The PRC-Wide Rate

In the *Preliminary Determination*, we found that the use of adverse facts available (FA) for the PRC-wide rate was appropriate for other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from JMC and SFTEC.

Section 776(c) of the Act provides that, when the Department relies on secondary information in using facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. At the preliminary determination, we corroborated the information contained in the petition regarding export price and normal value (NV). See Memorandum to Holly A. Kuga, Corroboration of Secondary Information, dated September 19, 2002 (*Preliminary Corroboration Memorandum*). In order to corroborate the petition information, we recalculated the petition margin to reflect new information placed on the record of the investigation after initiation and prior to the preliminary determination. *Id.*, at page 6. We received no comments regarding our application of total adverse FA to the PRC-wide entity or our corroboration of petition information. As a result, we have continued to apply an adverse FA rate to the PRC-wide entity. For further discussion, see *Preliminary Determination*.

For the *Preliminary Determination*, we derived overhead, selling, general, and administrative (SG&A) expenses, and profit ratios from the 1999–2000 combined income, value of production, expenditure and appropriation account for a sample of 1,914 public companies in India that were reported in the June 2001 *Reserve Bank of India Bulletin*. Both JMC and SFTEC alleged that in the Preliminary Determination, the Department overstated SG&A expenses. After review, we agreed that the calculation of the SG&A ratio was in error. *See* Ministerial Error Allegations Memorandum. For the final determination, we recalculated the petition margin using the corrected SG&A ratio and corrected several other arithmetic errors. We also adjusted the surrogate value for electricity As a result of these recalculations, the PRC-wide rate is, for the final determination, 75.5 percent *ad valorem*. *See* Memorandum to the File from the Team, Corroboration of Secondary Information, dated February 7, 2003.

Surrogate Country

For purposes of the final determination, we continue to find that India remains the appropriate surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the Preliminary Determination.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, see the ''Changes Since the Preliminary Determination'' section below.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the preliminary determination. These adjustments are listed below and discussed in detail in the (1) Decision Memorandum, (2) Memorandum to the File, Surrogate Country Values Used for the Final Determination of the Antidumping Duty Investigation of Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, dated February 7, 2003, (Surrogate Country Values Memorandum) and (3) Memorandum to the File from the Team, Final Calculation of Antidumping Duty Investigation of Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China for Shanghai Foreign Trade Enterprises Co., Ltd., dated February 7, 2003 (SFTEC's Final Calculation Memorandum), and Memorandum to the File from the Team, Final Calculation of Antidumping Duty Investigation of Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China for Jinan Meide Casting Co., Ltd., dated February 7, 2003 (JMC's Final Calculation Memorandum).

1. We corrected the SG&A and the plastic sheet surrogate value for JMC. See Ministerial Error Allegations Memorandum and JMC's Final Calculation Memorandum.
2. We corrected the SG&A and the wooden crates surrogate value for SFTEC. See Ministerial Error Allegations Memorandum and SFTEC's Final Calculation Memorandum.
3. We revised our calculation of freight costs for the factors of production to include the revised distances identified during verification. *See* JMC's Final Calculation Memorandum and SFTEC's Final Calculation Memorandum.
4. We adjusted the surrogate value for pig iron. *See* Decision Memorandum, at Comment 6.
5. We adjusted SFTEC's reported raw material consumption factors to reflect only the sales revenue received from scrap sales based on the surrogate value for cast iron scrap. *See* Decision Memorandum, at Comment 3, and SFTEC's Final Calculation Memorandum.
6. We adjusted the surrogate value for electricity. *See* Surrogate Country Values Memorandum.
7. As partial FA for JMC, we adjusted the conversion costs at the gray iron casting workshop to account for the difference between the highest product-specific yield loss and the average yield loss of all products in the gray iron casting workshop. *See* Decision Memorandum, at Comment 1, and JMC's Final Calculation Memorandum.
8. We have allowed JMC's offset for scrap recovered. *See* Decision Memorandum, at Comment 5, and JMC's Final Calculation Memorandum.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Customs Service to continue suspension liquidation of entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after September 25, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation

instructions will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average percentage margins exist for the period July 1, 2001, through December 31, 2001:

Manufacturer/exporter	Weighted-Average Margin (percent)
Jinan Meide Casting Co., Ltd.	7.08
Shanghai Foreign Trade Enterprises Co., Ltd.	6.34
PRC-Wide Rate	75.50

The PRC-wide rate applies to all entries of the subject merchandise except for entries from JMC and SFTEC.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to 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.

Dated: February 7, 2003.

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

Appendix Issues in Decision Memorandum

Comment 1: Whether Respondents Properly Reported the Necessary Information to the Department
Comment 2: Whether the Department Correctly Calculated the Distance for the NME Inland Freight Charge
Comment 3: Whether the Department Should Correct the Treatment of Scrap and Coke Offset Reported by SFTEC
Comment 4: Whether the Department Correctly Derived Surrogate Financial Ratios
Comment 5: Whether the Department Should Credit JMC with the Recovery of Scrap from the Smoothing and Threading Workshops
Comment 6: Whether the Department Erred in Valuing the Surrogate Value for Pig Iron
Comment 7: Whether the Department Should Adjust SFTEC's Coke Usage
Comment 8: Whether the Department Properly Calculated the Surrogate Brokerage and Handling Value
Comment 9: Whether the Department will Correct the Ministerial Errors from the Preliminary Determination

[FR Doc. 03–3852 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–001]

Potassium Permanganate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) in response to a request by Groupstars Chemical LLC (Groupstars LLC), a U.S. importer of potassium permanganate. The review covers potassium permanganate (subject merchandise) exported to the United States by Groupstars LLC's affiliated PRC exporter, Groupstars Chemical Co., Ltd. (collectively Groupstars). The Department has preliminarily determined that Groupstars sold subject merchandise during the period of review (POR) at prices below normal value (NV). If the preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 18, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1009 and (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The POR is January 1, 2001 through December 31, 2001.

Background

On January 31, 1984, the Department published in the **Federal Register** (49 FR 3897) the antidumping duty order on potassium permanganate from the PRC. On January 30, 2002, in response to the Department's notice of ''Opportunity to Request an Administrative Review,'' Groupstars LLC requested that the Department conduct an administrative review of its supplier, Groupstars Chemical Co., Ltd. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56 (January 2, 2002).

On February 26, 2002, the Department published a notice of initiation of an antidumping duty administrative review covering Groupstars' sales of potassium permanganate during the period January 1, 2001 through December 31, 2001. *See* the notice *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 8780.[1]

[1] Although Groupstars Chemical LLC is the company listed in the notice of initiation, as noted above, Groupstars Chemical LLC is the U.S.

On March 1, 2002, the Department issued its antidumping questionnaire to Groupstars. Groupstars responded to the Department's questionnaire on April 3, 2002 and April 10, 2002. Additionally, Groupstars submitted responses to the Department's July, August, October, and November 2002 supplemental questionnaires during August, September, October, and November 2002, respectively. On March 7, 2002 and August 23, 2002, interested parties submitted publicly available information and comments for the Department's consideration in valuing factors of production (FOP) in this administrative review.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On August 16, 2002, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until January 31, 2003. See Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 67 FR 54408 (August 22, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).[2]

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, we verified sales and FOP information provided by Groupstars using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the report. *See* Memorandum from John Conniff and Drew Jackson to the file regarding ''Verification of Groupstars Chemical Co. Ltd's responses in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China,'' dated January 31, 2003 (Verification Report), the public version of which is on file in the Central Records Unit (CRU), room B-099 of the main Commerce building.

Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Groupstars provided the separate rates information requested by the Department and reported that its export activities are not subject to government control.

We examined the separate rates information provided by Groupstars in order to determine whether it is eligible for a separate rate. The Department's separate rates test, which is used to determine whether an exporter is independent from government control, does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (Silicon Carbide). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508 (May 6, 1991).

Groupstars submitted a copy of its business licenses in its questionnaire response. We examined Groupstars' business license at verification and found no inconsistencies with its statement regarding the absence of restrictive stipulations associated with its business license. *See* memorandum from John Conniff and Drew Jackson to the file regarding PRC Verification of Groupstars Chemical Co. Ltd's responses in the Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China (PRC Verification Report). Furthermore, Groupstars submitted copies of PRC legislation demonstrating the statutory authority for establishing the *de jure* absence of government control over companies. Thus, we believe that the evidence on the record supports a preliminary finding of absence of *de jure* governmental control based on: (1) an absence of restrictive stipulations associated with the business licenses of Groupstars; and (2) the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to, the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent

importer of subject merchandise while Groupstars Chemical Co. Ltd. is the PRC exporter of the subject merchandise.

[2] The scope reflects the correct HTSUS subheading currently in effect. The HTSUS number in the Department's two previous reviews was incorrect.

has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide*, at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Groupstars reported that it determines prices for sales of the subject merchandise based on market principles, the cost of the merchandise, and profit. Moreover, Groupstars stated that it negotiates prices directly with its customers. Also, Groupstars claims that its prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Groupstars has the authority to negotiate and sign contracts and other agreements. Further, Groupstars claims that its negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of Groupstars' contracts.

Furthermore, Groupstars reported that it has autonomy in making decisions regarding the selection of management. Groupstars indicated that its selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of the management of Groupstars.

Finally, Groupstars reported that it retains the proceeds of its export sales, and its management determines how to use profits. Groupstars stated that it operates in accordance with market principles and calculates profits and losses in a normal commercial manner. There is no evidence on the record to suggest that there is any governmental involvement in Groupstars' decisions regarding the disposition of profits or financing of losses.

Therefore, we find that the evidence on the record, including the verification findings, which are consistent with the separate rates information reported by Groupstars, supports a preliminary finding of absence of *de facto* governmental control based on record statements and supporting documentation showing that: (1) Groupstars sets its own export prices independent of the government and without the approval of a government authority; (2) Groupstars has the authority to negotiate and sign contracts and other agreements; (3) Groupstars has adequate autonomy from the government regarding the selection of management; and (4) Groupstars retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this review by Groupstars demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the purposes of these preliminary results, we are granting a separate rate to Groupstars.

Fair Value Comparisons

To determine whether Groupstars' sales of subject merchandise were made at prices less than NV, we compared the constructed export price (CEP) to NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below.

Constructed Export Price

In accordance with section 772(b) of the Act, the Department calculated a CEP for all sales by Groupstars to the United States because the first sale to an unaffiliated purchaser occurred after the subject merchandise was imported into the United States. We calculated CEP based on the packed prices from Groupstars LLC to the first unaffiliated U.S. customer. In accordance with section 772(c) of the Act, we deducted from the starting price, where appropriate, movement charges including foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. Customs duties, U.S. brokerage and handling, U.S. inland freight, and U.S. warehousing charges. Foreign inland freight, foreign brokerage and handling, and ocean freight, were provided by NME vendors, and thus, we based the deductions for these movement charges on the surrogate values identified in the ''Normal Value'' section of this notice below. Groupstars' shipments of subject merchandise were insured through a market-economy marine insurance provider and the provider was paid using a market-economy currency. Therefore, pursuant to 19 CFR 351.408(c)(1), we used the actual price paid for marine insurance as a deduction from the starting price. In accordance with 772(d)(1) of the Act, we deducted from the starting price those selling expenses that related to economic activity in the United States. In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit. For additional information regarding these adjustments, see the calculation memorandum from Drew Jackson to the File dated January 31, 2003 which is in the CRU public file (Calculation Memorandum).

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if: (1) the subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value pursuant to section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing potassium permanganate include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. *See* Memorandum from Jeffrey May,

Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement, dated February 28, 2002, which is in the CRU public file.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOP using surrogate values that were in effect during the POR. However, when we were unable to obtain surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We valued the following materials using available Indian import data from the publication *Monthly Statistics of the Foreign Trade of India*, Volume II--Imports (*Indian Import Statistics*) for the period January through December 2001: manganese ore, potassium hydroxide, limestone, silicon dioxide, salt, pallets, steel drums, polyethylene bags, woven plastic bags and coal.[3] *See* Memorandum from Drew Jackson to the File Regarding Surrogate Values Used for the Preliminary Results of the Administrative Review of Potassium Permanganate from the People's Republic of China (Surrogate Value Memorandum), dated January 31, 2003, which is in the CRU public file.

(2) We valued plastic drums using 2001 data found on the *Economic Times of India* website.

(3) We valued electricity using 2000–2001 data from the *Annual Report on the Working of State Electricity Boards & Electricity Departments*, published in June 2001 by the Power and Energy Division of the Planning Commission of the Government of India.

(4) We valued water using the Indian value reported in the publication *Second Water Utilities Data Book (1997)*, published by the Asian Development Bank.

(5) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's web site under ''Expected Wages of Selected NME Countries.'' See http://ia.ita.doc.gov/wages.

(6) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using 1992–1993 information reported in the *Reserve Bank of India Bulletin* of January 1997. There is no information on the record regarding the factory overhead, SG&A expenses, and profit for Indian producers of potassium permanganate. However, the *Reserve Bank of India Bulletin* maintains data for an Indian industry group that includes companies that process and manufacture chemicals. Therefore, we have used this source to value factory overhead, SG&A expenses, and profit for the preliminary results. Using the information from the *Reserve Bank of India Bulletin*, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(7) We used the following sources to value ocean, truck, and rail freight services. Truck and rail freight services were incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to Groupstars:

Truck Freight: We valued truck freight services using the 1999 rate quotes reported by Indian freight companies and used in the less than fair value investigation of bulk aspirin from the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000).

Rail Freight: We valued rail freight services using July 1999–2000 rates published in the *Reserve Bank of India Bulletin* in July 2001.

Ocean Freight: We valued ocean freight services using the regional rates calculated in the *Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160 (February 28,1997).

(8) We valued foreign brokerage and handling using the average of the foreign brokerage and handling expenses reported in the public versions of the U.S. sales listing submitted in the antidumping duty review of *Certain Stainless Steel Wire Rod from India: Final Results of the Administrative and New Shipper Review*, 64 FR 856 (January 6, 1999).

For further discussion of the surrogate values used in this review, see the Surrogate Value Memorandum.

Use of Partial Facts Available

Pursuant to section 776(a)(2)(D) of the Act, the Department may use facts available when an interested party provides information but the information cannot be verified. In the instant review, Groupstars was unable to substantiate the consumption quantity reported for pallets. *See* PRC Verification Report. Therefore, the Department has resorted to the use of facts available with respect to this factor. Specifically, as facts available, the Department calculated the consumption quantity of pallets by dividing the total number of pallets purchased by Groupstars during the POR by the total quantity of subject merchandise exported during the POR. For further details, see the Calculation Memorandum.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage dumping margin exists for the period January 1, 2001 through December 31, 2001:

Exporter/Manufacturer	Margin (percent)
Groupstars Chemical Co., Ltd.	13.31%

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within 10 days of the date of announcement of the preliminary results. Interested parties may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) in accordance with 19 CFR 351.309(c)(1)(ii) and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs in accordance with 19 CFR 351.309(d). Case briefs must be submitted within 30 days after the date of publication of this notice. Rebuttal briefs must be submitted within five days after the time limit for filing case briefs. Parties who submit arguments 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. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results.

[3] For some of the FOP, we were unable to find Indian import statistics for March 2001. We will attempt to find the March 2001 statistics for the final results of review.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated importer-specific assessment rates for merchandise subject to this review. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the total entered value of the reviewed sales. Where the importer-specific assessment rate is above *de minimis*, we will direct Customs to assess the resulting *ad valorem* rate against the entered value of the entry of the subject merchandise by that importer during the POR. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates, calculated as described above, on each of the importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of potassium permanganate from the PRC 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 named above will be the rate for that firm established in the final results of this administrative review; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rate in effect; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations 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 determination in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: January 31, 2003.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–3853 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings and Anticircumvention Inquiries

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

ACTION: Notice of scope rulings and anticircumvention inquiries.

EFFECTIVE DATE: February 18, 2003.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention determinations completed between July 1, 2000 and September 30, 2002. In conjunction with this list, the Department is also publishing a list of requests for scope determinations and anticircumvention determinations pending as of September 30, 2002. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Sally Gannon, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2243 or (202) 482–0162, respectively.

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings. *See* 19 CFR 351.225(o). Our most recent ''Notice of Scope Rulings'' was published on August 29, 2000. *See* 65 FR at 52409.

This notice covers all scope rulings and anticircumvention determinations completed by Import Administration between July 1, 2000 and September 30, 2002, inclusive. It also lists any scope or anticircumvention inquiries pending as of September 30, 2002. The Department intends to publish the items contained herein in February 2003. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between July 1, 2000 and September 30, 2002

France

A–427–801: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France; Saint-Gobain Ceramics and Plastics, Inc.; ceramic ball blanks used in the production of balls are outside the scope of the order; August 9, 2001.

Germany

A–428–801: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Germany; TEMCO Textilmaschinenkomponenten GmbH and Petree & Stoudt Associates, Inc.; certain textile machinery components are outside the scope of the order; October 1, 2001.

India

A–570–864: Pure Magnesium in Granular from the People's Republic of China; ESM Group Inc.; pure magnesium in granular form that is ground in Canada or another third country from pure magnesium ingots produced in the PRC is within the scope of the order; August 21, 2002.

Japan

A–588–804: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan; NTN Bearing Corporation of America; balls used in an EM coupling are within the scope of the order; August 25, 2000.

A–588–804: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan; Sanden International USA; parts of an electromagnetic (EM) coupling, identified as an orbiting EM plate, and a fixed EM plate are outside the scope of the order; February 12, 2001.

A–588–804: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan; NTN Corporation, NTN Bearing Corporation of America, NTN Driveshaft, Inc., NTN–Bower Corporation, and NTN–BCA Corporation; turntable slewing bearings used in computerized tomography (CT)

scan machines are outside the scope of the order; July 9, 2001.

A–588–804: Ball Bearings and Parts Thereof from Japan; Honda Motor Company, Ltd., *via* Honda of Canada Manufacturing; ball bearing and parts thereof are outside the scope of the order; June 20, 2002.

A–588–840: Engineered Process Gas Turbo-Compressor Systems from Japan; Mitsubishi International Corporation; steam turbine imported as a replacement part, revamping the engineered process gas turbo compressor system, is not within the scope of the order; November 29, 2001.

A–588–845: Stainless Steel Sheet and Strip in Coils from Japan; Federal-Mogul Corporation and McCord Leakless Sealing Co.; McCord Grade 301 Precision Strip is within the scope of the order; October 29, 2001.

A–588–854: Tin Mill Products from Japan; Weirton Steel and Independent Steel Worker; double reduced electrolytically chromium coated steel is within the scope of the order; October 12, 2001.

A–588–854: Tin Mill Products from Japan; Ton-Yi Industrial Corporation; double-reduced electrolytic tin plate (ETP) meeting the requirements of ASTM specification A 626/A 626M and double-reduced tin-free (TFS) meeting the requirements of ASTM specification A 657/A 657M produced in Taiwan from Japanese black plate are outside the scope of the order; March 21, 2002.

A–588–854: Tin Mill Products from Japan; Okaya, U.S.A., Inc.; tin-free single reduced electrolytically chromium coated steel is inside the scope of the order; August 27, 2002.

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; ''bond cake'' candles are outside the scope of the order; ''Christmas tree'' taper and white taper candles are within the scope of the order; July 7, 2000.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Cherrydale Farms; ''floating bug'' candles are within the scope of the order; October 5, 2000.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Cherrydale Farms; ''strawberry preserves'' mason jar candle and ''novelty fruit gel'' candle are within the scope of the order; October 6, 2000.

A–570–504: Petroleum Wax Candles from the People's Republic of China; San Francisco Candle Company; certain Christmas candles containing minimally decorative designs or designs generic to the winter season are within the scope of the order; ''Carved Christmas Tree with Star'' pillar candle is outside the scope of the order; February 12, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Barthco Trade Consultants; ''floating flower'' candles, ''floating star'' candles, and ''mini loaf'' candles are all within the scope of the order; April 30, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; ''heart-shaped'' candle is outside the scope of the order; May 4, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; ''holly'' pillar candle is outside the scope of the order; May 8, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; JCPenney Purchasing Corporation; various Christmas candles containing holly and Santa Claus images, ''NOEL'' pillar candles, Halloween candles containing Jack O'' Lanterns and ghosts, certain candles in the form of identifiable objects, ''Build Your Own Candle'' kit, and certain candles containing palm oil are all outside the scope of the order; candles with non-holiday-specific generic decorations, and candles claimed to be in shapes outside the scope, are all within the scope of the order; May 21, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; ''tear-drop'' candle is within the scope of the order; June 11, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; ''disc'' candle is within the scope of the order; July 11, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; ''Easter figurine'' candles and ''pine cone'' candles are outside the scope of the order; July 11, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; ''floral lamp shade'' pillar candle is within the scope of the order; July 30, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; JCPenney Purchasing Corporation; ''flower'' candles and ''leaf'' candles are all outside the scope of the order; November 9, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Jo-Ann Stores; ''floating flower'' candle, ''champagne glass flower'' candle and ''heart floater'' candle are all outside the scope of the order; ''five point star'' candle and ''star floater'' candle are within the scope of the order; January 29, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; ''floating pumpkin lantern'' candle is within the scope of the order; February 13, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Atico International, Inc.; ''flower-shaped,'' ''sunflower,'' and ''tulip with fence'' candles are all outside the scope of the order; February 19, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Premier Candles; ''tulip-shaped'' wax-filled container is within the scope of the order; February 25, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Atico International, Inc.; ''valentine heart'' candle, ''Easter egg'' candles, ''Easter'' floating candles, ''lantern'' candles, and ''valentine heart with lip'' candle are all within the scope of the order; April 8, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; round ''ball'' candle is within the scope of the order; April 8, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; votive candle is within the scope of the order; May 21, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; T.S. Group, Inc.; assorted ''utility'' candles are within the scope of the order; May 21, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Peerless Umbrella Co.; ''star-shaped'' candle is within the scope of the order; August 29, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Interpro International; assorted round and ''floating disc'' candles are within the scope of the order; September 26, 2002.

A–570–836: Glycine from the People's Republic of China; Watson Industries, Inc.; glycine of Chinese origin that was refined and re-exported from South Korea which was then imported by Watson, was within the scope of the antidumping duty order; May 3, 2002.

A–570–855: Non-frozen Apple Juice Concentrate from the People's Republic of China; Coloma Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc. and Tree Top, Inc.; imports of ''semi-frozen'' apple juice concentrate from the PRC are outside the scope of the order; October 1, 2001.

A–570–862: Foundry Coke from the People's Republic of China; Dajin U.S.

Trading, Inc.; certain coke (specifically, shipments of coke in which it is determined less than 50 percent of the shipment is larger than 100 mm in diameter, after drop shatter testing) is within the scope of the order; May 31, 2002.

A–570–862: Foundry Coke from the People's Republic of China; Importer: Shook Group LLC and Dajin U.S. Trading, Inc.; Producer: Shanxi Dajin International (Group) Co. Ltd.; certain coke (specifically, shipments of coke in which it is determined less than 50 percent of the shipment is larger than 100 mm in diameter, after drop shatter testing) is within the scope of the order; May 31, 2002.

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China; ESM Group Inc.; pure magnesium in granular form that is ground in Canada or another third country from pure magnesium ingots produced in the PRC is within the scope of the order; August 21, 2002.

Taiwan

A–583–816: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan; Importer: Allegheny Bradford Corporation d/b/a Top Line Process Equipment Company; Producer: King Lai International Co., Ltd. from Taichung, Taiwan; stainless steel butt-weld tube fittings are within the scope of the order; December 10, 2001.

A–583–827: Static Random Access Memory Semiconductors from Taiwan; Pacesetter Inc.; Platform B digital integrated circuits and symmetry controllers are not within the scope of the order; June 12, 2000.

Anticircumvention Determinations Completed Between July 1, 2000 and September 30, 2002

None.

Scope Inquiries Terminated Between July 1, 2000 and September 30, 2002

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; ''pearl'' pillar candle containing vegetable wax request withdrawn; original request received May 8, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; ''floating gel'' candle set request withdrawn; original request received October 24, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Endar Corporation; ''floating gel'' candle set request withdrawn; original request received November 9, 2001.

Anticircumvention Inquiries Terminated Between July 1, 2000 and September 30, 2002

None.

Scope Inquiries Pending as of September 30, 2002

Brazil

A–351–817 and C–351–818; Cut-To-Length Carbon Steel Plate from Brazil; TradeArbed, Inc.; whether continuous cast steel slab is within the scope of the order; initiated September 9, 2002.

India

A–533–808, A–533–810: Stainless Steel Wire Rod from India; Barthco Trade Consultants; whether stainless steel wire rod shipped to the United Arab Emirates, where it is further processed into finished stainless steel bars, which are then shipped to the United States is within the scope of the order; requested September 10, 2002.

Japan

A–588–835: Oil Country Tubular Goods from Japan; Grant Prideco; whether unfinished drill pipe from Japan without tool joints further processed in China into finished drill pipe with tool joints is substantially transformed into Chinese-origin merchandise; initiated June 16, 2000.

Mexico

A–201–805: Circular Welded Non-Alloy Steel Pipe from Mexico; whether mechanical tubing is within the scope of the order; requested July 31, 1998.

People's Republic of China

A–570–502: Certain Iron Construction Castings from the People's Republic of China; Frank J. Martin Co.; whether certain cast iron full-flanged rings and certain cast iron gas lids are within the scope of the order; requested August 21, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Burlington Toiletries, Ltd.; whether a petroleum wax gel candle is within the scope of the order; requested August 8, 2000.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; Atico International, Inc.; whether ''snowball'' candle, ''Christmas cake'' candle, certain glowing candles, ''JOY'' and ''PEACE'' pillar candles, certain beeswax candles (where exact beeswax composition was not identified), ''angel'' cake candle, ''angel bear'' candles, and ''NOEL'' pillar candle are within the scope of the order; requested August 24, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Leader Light, Ltd.; whether assorted pillar candles, ''star'' candles, ''brick'' candles, wax-filled containers, candle ''gardens,'' ''floating'' candles, ''jar'' candles, and assorted figurines are within the scope of the order; requested September 10, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Atico International, Inc.; whether a ''tiered heart-shaped'' disk candle and paraffin wax ''gel-filled'' candle are within the scope of the order; requested September 19, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Fleming International, Ltd.; whether candles containing synthetic and vegetable waxes are within the scope of the order; requested October 24, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; For Your Ease Only; whether floating gel candles are within the scope of the order; requested November 15, 2001.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Garden Ridge; whether assorted ''animal print'' candles containing palm oil are within the scope of the order; requested February 20, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; New Spectrum; whether assorted pillars, rounds, and figurines are within the scope of the order; requested March 29, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Hallmark Cards, Inc.; whether assorted ''leaves'' candles, a ''star'' candle, and a ''dome-shaped'' candle are within the scope of the order; requested May 8, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Meijer, Inc.; whether ''birthday'' candles and assorted pillars, rounds, and wax-filled containers are within the scope of the order; requested May 14, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether ''resin topper jar'' candles containing palm oil are within the scope of the order; requested May 21, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether a ''flower'' pillar candle containing stearic wax is within the scope of the order; requested May 28, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether a ''fruit'' pillar candle containing stearic wax is within the scope of the order; requested May 28, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether two ''disc-shaped'' candles containing stearic wax are within the scope of the order; requested May 28, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Home Interiors & Gifts, Inc.; whether a ''rose blossom'' candle, ''sunflower'' floating candles, ''Americana heart'' floating candles, ''baked apple'' tea lights, and vanilla tea lights are within the scope of the order; requested June 4, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether three wax filled gel candles are within the scope of the order; requested June 13, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Dollar Tree Stores, Inc.; whether assorted ''gel-filled'' containers are within the scope of the order; requested August 1, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; San Francisco Candle Company; whether a ''candy cane'' candle is within the scope of the order; requested August 23, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; San Francisco Candle Company; whether a ''heart-shaped'' candle is within the scope of the order; requested August 23, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Avon Products, Inc.; whether a ''floating rose-shaped'' candle is within the scope of the order; requested September 30, 2002.

A–570–504: Petroleum Wax Candles from the People's Republic of China; Neatzit Israel International, Ltd.; whether a Chanukah candle is within the scope of the order; requested September 30, 2002.

Russian Federation

A–821–802: Antidumping Suspension Agreement on Uranium; USEC, Inc. and its subsidiary, United States Enrichment Corporation; whether enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the order; August 6, 1999.

Multiple Countries

A–475–820: Stainless Steel Wire Rod from Italy, C–475–821: Stainless Steel Wire Rod from Italy, A–588–843: Stainless Steel Wire Rod from Japan, A–469–805: Stainless Steel Wire Rod from Spain, A–469–807: Stainless Steel Wire Rod from Spain, A–583–828: Stainless Steel Wire Rod from Taiwan, A–533–810: Certain Stainless Steel Wire Rod from India, A–588–833: Stainless Steel Wire Rod from India, A–351–825: Stainless Steel Wire Rod from Brazil, A–533–808: Stainless Steel Wire Rod from India, C–469–004: Stainless Steel Wire Rod from Spain; Ishar Bright Steel Ltd.; scope inquiry as to whether stainless steel bar that is manufactured in the United Arab Emirates from stainless steel wire rod imported from multiple subject countries is within the scope of the orders; requested December 22, 1998.

Anticircumvention Inquiries Pending as of September 30, 2002

Italy

A–475–818 & C–475–819: Certain Pasta From Italy; Pastificio Fratelli Pagani S.p.A. (Pagani); whether imports of certain pasta from Italy, falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping and countervailing duty orders; initiated April 27, 2000.

Japan

A–588–824 Corrosion-Resistant Carbon Steel Flat Products; USS-Posco Industries; whether imports of boron-added hot-dipped and electrolytic corrosion-resistant carbon steel sheet, falling within the physical dimensions outlined in the scope of the order, are circumventing the order; initiated October 30, 1998.

Interested parties are invited to comment on the completeness of this list of pending scope inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Enforcement Group III, Import Administration, International Trade Administration, 14th Street and Constitution Avenue NW, Room 1870, Washington, DC 20230.

This notice is published in accordance with section 351.225(o) of the Department's regulations.

Dated: February 10, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3851 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Jointly Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned in part by the U.S. Government, as represented by the Department of Commerce, and JILA/University of Colorado. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: National Institute of Standards and Technology, Technology Partnerships Division, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov,* or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

[Docket No.: 01–021US]

Title: Method Of Minimizing The Short-Term Frequency Instability Of Laser-Pumped Atomic Clocks

Abstract: The invention proposes a method of optimizing the performance of laser-pumped atomic frequency references with respect to the laser detuning and other operating parameters. The invention establishes that the frequency reference short-term instability will be minimized when (a) the laser frequency is tuned nominally a few tens of MHz away from the center of the atomic absorption line; and (b) the external oscillator lock modulation frequency is set either far below or far above the inverse of the optical pumping time of the atoms. The exact parameters for the optimization depend on the particular experimental situation and can be roughly calculated using a theory developed to simulate the clock performance.

Dated: February 10, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–3818 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021003D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Magnuson-Stevens Act Committee in March, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, March 4, 2003 at 6 p.m.

ADDRESSES: The meeting will be held at the Providence Biltmore, 11 Dorrance Street, Providence, RI 02903; telephone: (401) 421–0700.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council's Magnuson-Stevens Act Committee will meet on Tuesday, March 4, 2002 at 6 p.m. or following the last scheduled item on the agenda for the New England Fishery Management Council meeting. The Committee plans to discuss issues related to reauthorization of the Magnuson-Fishery Conservation and Management Act.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 11, 2003.

Theophilus R. Brainerd,

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

[FR Doc. 03–3848 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102A]

National Plan of Action for the Management of Fishing Capacity

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

ACTION: Notice of availability of draft plan.

SUMMARY: NMFS announces the availability of a draft National Plan of Action (NPOA) developed pursuant to the International Plan of Action (IPOA) for the Management of Fishing Capacity by the United Nations' Food and Agriculture Organization (FAO) Committee on Fisheries (COFI) Ministerial Meeting in February 1999. Members of the public are encouraged to provide comments on the draft NPOA.

DATES: Comments must be received no later than March 17, 2003.

ADDRESSES: Written comments and requests for copies of the draft NPOA should be submitted to Matteo Milazzo, Regulatory Services Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–0596. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Matteo Milazzo at 301–713–2337, fax 301–713–0596.

SUPPLEMENTARY INFORMATION:

Electronic Access

The draft U.S. NPOA for the Management of Fishing Capacity is available electronically at the following address: http://www.nmfs.noaa.gov/sfa/sfweb/index.htm.

Background

The United States played a significant role during the 1990s in global programs to accurately identify and assess the problem of overcapacity in marine fisheries, and was a key player in the FAO technical and policy-level consultations of 1997–1999 that led to the International Plan of Action for the Management of Fishing Capacity. The IPOA calls on member nations to voluntarily develop, adopt and make public national plans of action for the management of fishing capacity, and if required, reduce fishing capacity in order to balance fishing capacity with available resources on a sustainable basis. The plans are to be based on an assessment of fish stocks and should give due consideration to the socio-economic aspects of reducing fishing capacity.

The United States has been committed to developing this national plan, and reporting on its implementation to FAO/COFI. NMFS seeks public comments on the Capacity NPOA and the public's input will be used to develop the final NPOA.

Dated: February 11, 2003.

Richard W. Surdi,

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

[FR Doc. 03–3846 Filed 2–14–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, March 5, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3928 Filed 2–13–03; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, March 7, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3929 Filed 2–13–03; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Friday, March 7, 2003.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3930 Filed 2–13–03; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, March 14, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3931 Filed 2–13–03; 11:19 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AN DATE: 11 a.m., Friday, March 21, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3932 Filed 2–13–03; 11:19 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, March 28, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–3933 Filed 2–13–03; 11:19 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 18, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management (OMB) provide interested Federal agencies and the public and early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publish that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension or reinstatement; (Title); (3) Summary of the collection; (4) Description of the need for, and proposed use of the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Dated: February 11, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New Collection.

Title: Pre-Elementary Education Longitudinal Study (PEELS) Phase 1.

Frequency: Varies.

Affected Public:

Individuals or households, Not-for-profit institutions, State, local, or Tribal Gov't. SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 17,741.

Burden Hours: 4,986.

Abstract: PEELS will provide the first national picture of experience and outcomes of three to five year old children in early childhood special education. The study will inform special education policy development and support GPRA measurement and IDEA reauthorization with data from parents, service providers, and teachers.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her email address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–3778 Filed 2–14–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–228–001]

Alliance Pipeline L.P.; Notice of Compliance Filing

February 11, 2003.

Take notice that on February 6, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 253, proposed to become effective February 1, 2003..

On December 31, 2002, Alliance filed First Revised Sheet No. 253 to amend the General Terms and Conditions (GTC) of its FERC Gas Tariff to permit Alliance to terminate a temporary release of capacity, upon 30-days written notice to the replacement shipper, where (i) Alliance has terminated the releasing shipper's Firm Transportation Agreement or Master Capacity Release Agreement in accordance with GTC Section 8 (Default and Termination); and (ii) the rate stated in the replacement shipper's applicable Capacity Release Schedule is less than the rate that the releasing shipper was obligated to pay Alliance.

Alliance further proposed that a replacement shipper may avoid termination of the temporary release if, prior to the end of the 30-day notice period, the replacement shipper agrees that, beginning the first day after the end of the 30-day notice period, it will pay, for the remainder of the term of the release, either the rate the former releasing shipper was obligated to pay Alliance, the maximum applicable Recourse Reservation and Usage Charges as stated in the tariff for the applicable service, or a rate mutually agreed upon by Alliance and the Shipper.

By order issued January 30, 2003, the Commission accepted Alliance's filing, to be effective February 1, 2003, subject to Alliance filing clarifying language specifying that the replacement shipper may retain the released capacity by agreeing to pay the ''lesser of'' the available rate options. By its filing, Alliance is proposing to add the required clarifying language. Alliance states further that, because the relative relationship between its recourse and negotiated rates will not necessarily remain static over the term of any particular release of capacity, it is also adding further clarifying language to provide the replacement shipper with the right to determine which of the available rate options will provide the lowest effective rate over the remaining term of a capacity release.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3799 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket Nos. ER01–2221–000 and ER01–2221–001]

Federal Energy Regulatory Commission Energy Transfer—Hanover Ventures, LP; Notice of Issuance of Order

February 11, 2003.

Energy Transfer—Hanover Ventures, LP (Energy Transfer), submitted for filing a rate schedule under which Energy Transfer will engage in wholesale electric energy and capacity at market-based rates. Energy Transfer also requested waiver of various Commission regulations. In particular, Energy Transfer requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Energy Transfer.

On October 29, 2001, pursuant to delegated authority, the Director, Division of Tariffs and Rates—West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Energy Transfer should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 21, 2003.

Absent a request to be heard in opposition by the deadline above, Energy Transfer is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Energy Transfer, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Energy Transfer's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3795 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–49–000]

National Fuel Gas Supply Corporation; Notice of Application

February 11, 2003.

Take notice that on February 3, 2003, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP03–49–000 pursuant to Section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations, for permission and approval to abandon certain minor underground natural gas storage facilities in its Summit Storage Field (Summit), in Erie County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link, select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

National Fuel proposes to abandon certain facilities in the Summit Storage Field. National Fuel proposes to abandon Wells 1511–P, 1518–P and 1528–P and to abandon their associated 4-inch well lines. National Fuel proposes to abandon the facilities, because the wells have deteriorated well casings and contribute very little to Summit's injection and withdrawal capability. National Fuel further states that the deteriorated well casings would require expensive reconditioning or abandonment. Since the wells contribute very little to Summit's injection and withdrawal capability and are in close proximity to residences, National Fuel does not recommend reconditioning of the wells. The application indicates that there would be no abandonment or decrease in service to any of National Fuel's existing customers as a result of the proposed abandonment. National Fuel states that it would cost approximately $135,360 to abandon its facilities in this proposal.

Any questions regarding Natural Fuel's application should be directed to David W. Reitz, Deputy General Counsel, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, at (716) 857–7949.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3793 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–243–000]

Nicole Energy Services, Inc.; Notice of Petition for Declaratory Order

February 11, 2003.

Take notice that on January 24, 2003., Nicole Energy Services, Inc., (Nicole) tendered for filing a petition for a declaratory order to terminate a controversy.

Nicole requests that the Commission issue a declaratory order stating, as a matter of law, (1) that the Natural Gas Tariff of Columbia Gas Transmission Corporation (CGT) requires CGT to install meters at its cost to measure the volume gas received from a shipper; (2) that CGT's Natural Gas Tariff permits, but does not require, shippers of natural gas to install ''check meters'' to verify the gas volumes measured by CGT's meters; and (3) that CGT can make no downward adjustment to a shipper's gas volumes other than the ''retainage'' adjustment provided for in CGT's Natural Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3801 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–251–000]

Northern Border Pipeline Company; Notice of Tariff Filing

February 11, 2003.

Take notice that on February 6, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the filing, to become effective March 10, 2003.

Northern Border is filing these revised tariff sheets to clearly state that in accordance with Section 284.8 of the Commission's regulations, Rate Schedule T–1B Shippers have the right to release capacity pursuant to Section 27, Release of Firm Capacity, of the General Terms and Conditions and to make minor tariff housekeeping changes.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3803 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–31–000]

Paiute Pipeline Company; Notice of Site Visit

February 11, 2003.

On February 19, 2003, the staff of the Office of Energy Projects will participate in a site visit to the area proposed for construction of natural gas pipeline facilities by Paiute Pipeline Company for its Carson Lateral Replacement Project, in Lyon, Douglas, Carson City, and Washoe Counties, Nevada. The site visit will begin at 8 a.m. from the Carson City Field Office of the U.S. Bureau of Land Management, 5665 Morgan Hill Road, Carson City, Nevada. All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Anyone interested in additional information on the site visit may contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary

[FR Doc. 03–3792 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–242–000]

Petal Gas Storage, L.L.C. ; Notice of Tariff Filing

February 11, 2003.

Take notice that on January 27, 2003., Petal Gas Storage, L.L.C., (Petal) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixth Revised Sheet No. 100, First Revised Sheet No. 140 and Sheet Nos. 141—199, with an effective date of March 1, 2003.

Petal states that the revised tariff sheets are being filed to modify Petal's tariff to provide for a general waiver of the ''shipper must have title'' rule in the event that Petal is transporting or storing gas for others on acquired off-system capacity and to include a general statement that Petal will only transport or store gas for others using off-system capacity pursuant to its existing tariff and rates.

Petal states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3800 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP03–252–000]

Federal Energy Regulatory Commission PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

February 11, 2003.

Take notice that on February 10, 2003., PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report which reports GTN's refund of revenues collected under its Competitive Equalization Surcharge mechanism, in compliance with Section 35 of GTN's FERC Gas Tariff.

GTN further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3804 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–253–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

February 11, 2003.

Take notice that on February 10, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report which reports GTN's refund of interruptible transportation revenues collected on its Coyote Springs Lateral, in compliance with section 35A of GTN's FERC Gas Tariff.

GTN further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3805 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–250–000]

Questar Pipeline Company; Notice of Tariff Filing

February 11, 2003.

Take notice that on February 6, 2003., Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 67 and Original Sheet No. 67A, to be effective March 8, 2003.

Questar states that it is proposing to revise § 6, Capacity Release and Assignment, of the General Terms and Conditions of part 1 of its tariff by adding § 6.24 to address circumstances where a releasing shipper is determined to be uncreditworthy.

Questar states that a copy of the filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3802 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–118]

Tennessee Gas Pipeline Company; Notice of Amendment to Negotiated Rate Agreement

February 11, 2003.

Take notice that on February 5, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing an amendment to the October 18, 2001, Negotiated Rate Agreement between Tennessee and NJR Energy Services (''Negotiated Rate Agreement'') which was previously accepted by the Commission in Tennessee Gas Pipeline Company, 97 FERC ¶ 61,248 (2001). The amendment provides for a change in the delivery points to which the negotiated rate applies. Tennessee requests that the Commission accept and approve the Amendment to the Negotiated Rate Agreement to be effective February 5, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3806 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–3117–000, ER01–3117–001, ER01–3118–000, and ER01–3118–001]

Well Power Gates, LLC; Wellhead Power Panoche, LLC; Notice of Issuance of Order

February 11, 2003.

Wellhead Power Gates, LLC and Wellhead Power Ponoche, LLC (together, ''Applicants'') filed applications requesting authority to transact at market-based rates along with the accompanying tariffs. The proposed market-based rate tariffs provide for sales of capacity, energy, and ancillary services at market-based rates. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On January 28, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates—West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 21, 2003.

Absent a request to be heard in opposition by the deadline above, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicants' issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3796 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–40–003, et al.]

American Electric Power Company, et al.; Electric Rate and Corporate Filings

February 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Company

[Docket Nos. EC98–40–003, ER98–2777–004 and ER98–2786–004]

Take notice that on February 6, 2002, the American Electric Power Company tendered for filing with the Federal Energy Regulatory Commission (FERC) Market Monitoring of American Electric Power: Tenth Quarterly Report to FERC.

Comment Date: February 27, 2003.

2. New York Independent System Operator, Inc.

[Docket No. ER03–200–002]

Take notice that on February 5, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing in connection with the Commission's January 21, 2003., order in the above-referenced dockets.

The NYISO states that it has served a copy of this filing to all parties listed on the official service list for the above proceeding. The NYISO has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility

regulatory agencies in New Jersey and Pennsylvania.

Comment Date: February 26, 2003.

3. American Electric Power Service Corporation

[Docket No. ER03–493–000]

Take notice that on February 4, 2003, American Electric Power Service Corporation (AEPSC) on its own behalf and on behalf of West Texas Utilities (WTU) submitted for filing an Amended and Restated Transmission Service Agreement for ERCOT Regional Transmission Service, dated October 22, 2002, between AEPSC and Southwest Texas Electric Cooperative, Inc. (SWTEC) and an Amended and Restated Interconnection Agreement, dated October 22, 2002, between WTU and SWTEC. Both agreements have been amended to recognize the termination of transmission service to WTU's Tippett Substation for SWTEC load and the initiation of transmission service to WTU's McCamey and Mesa View substations for such load.

AEPSC seeks an effective date of October 22, 2002 for the termination and addition of these points of delivery and, accordingly, seeks waiver of the Commission of Texas.

Comment Date: February 25, 2003.

4. Chattahoochee EMC

[Docket No. ER03–494–000]

Take notice that on February 4, 2003, Chattahoochee EMC tendered for filing a Notice of Cancellation of its FERC Electric Tariff Original Volume No. 1 and its Service Agreement Nos. 1 through 28.

Comment Date: February 25, 2003.

5. Talbot EMC

[Docket No. ER03–495–000]

Take notice that on February 4, 2003, Talbot EMC tendered for filing a Notice of Cancellation of its FERC Electric Tariff Original Volume No. 1 and its Service Agreement Nos. 1 through 30.

Comment Date: February 25, 2003.

6. Calpine Parlin, LLC

[Docket No. ER03–496–000]

Take notice that on February 4, 2003, Calpine Parlin, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession to adopt Calpine Parlin, Inc.'s market-based rate authorizations. Calpine Parlin, LLC requests an effective date of February 4, 2003 for the Notice of Succession.

Comment Date: February 25, 2003.

7. PJM Interconnection, L.L.C.

[Docket No. ER03–497–000]

Take notice that on February 4, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a revised interconnection service agreement between PJM and PPL West Earl, L.L.C. (PPL West Earl). The original agreement is revised to add development milestones and to include some other minor modifications.

PJM requests a January 10, 2003 effective date for the revised agreement.

PJM states that copies of this filing were served upon PPL West Earl and the state regulatory commissions within the PJM region.

Comment Date: February 25, 2003.

8. Florida Power & Light Company

[Docket No. ER03–498–000]

Take notice that on February 6, 2003, Florida Power & Light Company (FPL) tendered for filing an executed, revised Interconnection & Operation Agreement between FPL and Blue Heron Energy Center, LLC. FPL requests that this agreement be made effective upon execution by the parties, January 31, 2003., as mutually agreed by the parties.

Comment Date: February 27, 2003.

9. PacifiCorp

[Docket No. ER03–499–000]

Take notice that on February 5, 2003, pursuant to Section 205 of the Federal Power Act, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a proposed revision to FERC Rate Schedule No. 554, PacifiCorp's currently effective rate schedule for the 1964 Pacific Northwest Coordination Agreement (PNCA). PacifiCorp has filed a revised tariff sheet to reflect an extension of the term of the PNCA from June 30, 2003. to July 31, 2003. PacifiCorp requests that the Commission accept the change effective May 1, 2003.

PacifiCorp states that copies of this filing have been served upon all parties to the PNCA.

Comment Date: February 26, 2003.

10. Liberty Power Corp., L.L.C.

[Docket No. ER03–500–000]

Take notice that on February 6, 2003, Liberty Power Corp., L.L.C. (Liberty) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Liberty Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Liberty states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer, that it is not in the business of generating or transmitting electric power and that it has no corporate affiliations.

Comment Date: February 27, 2003.

11. La Paloma Generating Company, LLC

[Docket No. ER03–501–000]

Take notice that on February 6, 2003, La Paloma Generating Company, LLC (La Paloma) tendered for filing a proposed amendment to the Western Systems Power Pool (WSPP) agreement. The proposed amendment reflects the admission of La Paloma to the WSPP. La Paloma requests that the Commission authorize the proposed amendment to become effective on February 6, 2003.

Comment Date: February 27, 2003.

12. Niagara Mohawk Power Corporation

[Docket No. ER03–502–000]

Take notice that on February 7, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara) submitted for filing an Interconnection Facilities Agreement between Niagara and Hydro One Networks Inc. and an Interconnection Agreement between Niagara and Independent Electricity Market Operator.

Comment Date: February 28, 2003.

13. Aquila, Inc.

[Docket No. ER03–503–000]

Take notice that on February 7, 2003., Aquila, Inc. (Aquila) tendered for filing Service Agreement No. 96 under Aquila's FERC Electric Tariff, Third Revised Volume No. 25, a firm point-to-point transmission service agreement between Aquila's WestPlains Energy-Colorado division and MIECO, Inc.

UtiliCorp requests an effective date for the service agreement of February 7, 2002.

Comment Date: February 28, 2003.

14. Aquila, Inc.

[Docket No. ER03–504–000]

Take notice that on February 7, 2003, Aquila, Inc. (Aquila) tendered for filing Service Agreement No. 97 under Aquila's FERC Electric Tariff, Third Revised Volume No. 25, a short-term non-firm point-to-point transmission service agreement between Aquila's WestPlains Energy-Colorado division and MIECO, Inc.

UtiliCorp requests an effective date for the service agreement of February 7, 2003.

Comment Date: February 28, 2003.

15. Quonset Point Cogen, L.P.

[Docket No. ER03–505–000]

Take notice that on February 7, 2003, Quonset Point Cogen, L.P. (Quonset) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates, and waiving certain regulations of the Commission. Quonset requests that its Electric Rate Schedule No. 1 be made effective as of January 13, 2003.

Comment Date: February 28, 2003.

16. TXU Portfolio Management Company LP

[Docket No. ER03–506–000]

Take notice that on February 7, 2003, TXU Portfolio Management Company LP (TXU Portfolio Management), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16, and a revised market-based rate schedule (Rate Schedule). As a result of a name change, TXU Portfolio Management is succeeding to the tariffs and related service agreements of TXU Energy Trading Company LP, effective January 10, 2003. The revised Rate Schedule reflects the name change from TXU Energy Trading Company LP, and a revision to paragraph four (4) ''Affiliate Sales'' of the Rate Schedule to comply with the Commission's Order in Aquila, Inc., 101 FERC ¶ 61,331 (2002).

TXU Portfolio Management requests an effective date of January 10, 2003 for its revised Rate Schedule.

Comment Date: February 28, 2003.

17. TXU Big Brown Company LP, TXU DeCordova Company LP, TXU Tradinghouse Company LP, TXU Generation Company LP

[Docket No. ER03–507–000]

Take notice that on February 7, 2003, TXU Big Brown Company LP, TXU DeCordova Company LP, TXU Tradinghouse Company LP, and TXU Generation Company LP (Joint Applicants) filed with the Federal Energy Regulatory Commission Joint Applicants' Request for Waiver of Reporting Requirements and For Expedited Action.

Comment Date: February 28, 2003.

18. Upper Peninsula Power Company

[Docket No. ES03–23–000]

Take notice that on February 4, 2003, Upper Peninsula Power Company (Upper Peninsula) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in an amount not to exceed $20 million at any time.

Upper Peninsula also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3794 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–409–000, CP01–410–000, CP01–411–000, and CP01–444–000]

Tractebel Calypso Pipeline, L.L.C.; Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Tractebel Calypso Pipeline Project; Request for Comments on Environmental Issues and Notice of a Public Scoping Meeting and Site Visit

February 11, 2003.

On July 20, 2001, Calypso Pipeline, L.L.C. (Calypso) filed applications for Certificates of Public Convenience and Necessity for authorization to own, construct, operate, and maintain a new 24-inch-diameter, approximately 41.8-mile natural gas pipeline extending from a receipt point on the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas to delivery points in Broward County, Florida. On December 10, 2001, Calypso requested that the preparation of the EIS be temporarily suspended. Subsequently, on August 30, 2002, Tractebel Calypso Pipeline, L.L.C., (Tractebel Calypso) and Calypso, jointly filed a letter and enclosure notifying the Commission of a change in the applicant resulting from the sale of certain assets of Calypso to Tractebel Calypso. The sale of the project was completed October 8, 2002. Tractebel Calypso is now considered the applicant on record under the application with all rights and responsibilities attached to that status.

The staff of the Federal Energy Regulatory Commission (FERC or Commission), will prepare an Environmental Impact Statement (EIS) that will analyze the environmental impacts of the proposed Tractebel Calypso Pipeline Project. The FERC will be the lead federal agency. The Mineral Management Service (MMS) and the National Marine Fisheries Service (NMFS) are cooperating agencies in the preparation of the EIS.

The proposed pipeline originates in the Bahamas and would come ashore at Port Everglades, Florida. These facilities would consist of about 41.8-miles of 24-inch-diameter pipeline (approximately 36.0 miles offshore and approximately 5.8 miles onshore), a meter and pressure regulation station with a pig [1] receiver, and two block valves. This EIS will be used by the Commission in its decision-

[1] Pigs are tools that are used inside the pipeline for cleaning and inspecting the pipe.

making process to determine whether the project is in the public convenience and necessity. The MMS will have primary responsibility for offshore analysis in U.S. waters and will coordinate with the U.S. Army Corps of Engineers regarding Florida state waters review. Agencies listed in Appendix 3 are hereby asked to indicate whether they want to be cooperating agencies for purposes of producing an EIS.

The application, and other supplemental filings in this docket are available for viewing on the FERC Internet Web site (*http://www.ferc.gov*). Click on the ''FERRIS'' link, select ''General Search'' from the FERRIS Menu, and follow the instructions, being sure to input the correct docket number (CP01–409). General information about the MMS and detailed information regarding Florida state and Federal waters can be accessed at the MMS Internet Web site (*http://www.mms.gov*).

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain and under certain circumstances the pipeline company could initiate condemnation proceedings in accordance with Florida law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice that Tractebel Calypso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Florida is experiencing a substantial increase in demand for electric power as a result of population growth in the state. The Tractebel Calypso project would transport into Florida up to 832 million standard cubic feet of natural gas per day. The project would deliver the gas to an interconnect with the Florida Gas Transmission Company (FGT) system.

The Tractebel Calypso project would be located onshore in Broward County, Florida, and offshore in the Atlantic Ocean. The project would receive gas at the U.S./Bahamian EEZ at a subsea connection to a 24-inch pipeline, referred to as the Grand Bahama Island Pipeline, transporting natural gas from a proposed liquefied natural gas (LNG) storage facility in Freeport, Grand Bahama Island. The LNG facility and the Grand Bahama Island Pipeline are nonjurisdictional facilities.

Hawksbill Creek LNG, Ltd., a Bahamian company, proposes to construct and operate the LNG terminal in Freeport, Grand Bahama Island, that would receive LNG tankers arriving from international LNG supply locations. The LNG would be offloaded from the tankers and stored in specially designed storage tanks. From there, the LNG would be revaporized in heat exchangers on the terminal site and the resulting natural gas would be fed into the 24-inch-diameter offshore pipeline.

The FERC and MMS authorizations for this project would not extend eastward of the EEZ. The Government of the Bahamas regulates matters pertaining to the environment and safety and traditionally requires an environmental impact assessment as a condition to approving a project such as the LNG terminal and the Grand Bahama Pipeline. The Government of the Bahamas is in the process of reviewing the environmental impact assessment for these facilities.

The LNG facility and the Grand Bahama Pipeline are not part of the facilities proposed in the Tractebel Calypso Application to the FERC. In its application, Tractebel Calypso seeks authority to construct and operate:

Offshore Pipeline Segment

• The proposed offshore pipeline segment would be located in the Atlantic Ocean, off the southeast Florida coastline, and would consist of approximately 36 miles (31.2 nautical miles) of 24-inch-diameter pipeline (Offshore Pipeline). The Offshore Pipeline would traverse the Atlantic Ocean, starting at the U.S./Bahamian EEZ, passing through Federal and state waters, and ending at a shoreline entry at Port Everglades in Fort Lauderdale, Florida, to connect with the proposed Tractebel Calypso onshore pipeline segment.

Nearshore Pipeline Segment

• The Port Everglades, Florida shore approach would be installed utilizing horizontal directional drilling (HDD) techniques to minimize impacts to three nearshore coral reefs. The pipeline would be directionally drilled out from an upland site at Nova Southeastern University to a point 4,616 feet from shore on the north side of the Port Everglades entrance channel. From this point, a 2,132-foot-long by 25-foot-wide ditch would be cut through an existing spoil disposal area to the origination of a second directional drill. The second directional drill would be used to extend the pipeline an additional 5,130 feet to the northeast exiting at a depth of about 120 feet of water. Finally, the pipeline between 120 feet and 200 feet of depth would be covered with prefabricated flexible concrete mats. Where water depths exceed 200 feet, the Offshore Pipeline would be laid directly on the sea floor.

Onshore Pipeline Segment

• The proposed onshore pipeline segment would be located in Broward County, Florida, and would consist of approximately 5.8 miles of 24-inch-diameter pipeline (Onshore Pipeline). The Onshore Pipeline would start at the terminus of the proposed Offshore Pipeline (the Port Everglades shoreline entry) and end at a proposed interconnection with FGT's existing 24-inch-diameter Lauderdale Lateral at milepost (MP) 1.6 (near Florida Power & Light Company's [FP&L] Fort Lauderdale Plant). A block valve would be located near the beginning of the Onshore Pipeline. A pressure regulation and meter station with a pig receiver and block valve would be located at the terminus of the Onshore Pipeline. The proposed facilities are summarized in tables 1 and 2 below. The general locations of the project facilities are shown in Appendix 1 [2]. If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 4.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

TABLE 1.—PROPOSED PIPELINE FACILITIES FOR THE TRACTEBEL CALYPSO PIPELINE PROJECT

Location	Length (miles)
U.S. Federal Waters	31.6
Florida State Waters	4.4
Broward County (Onshore)	5.8
Total New Pipeline Length	41.81

[1] Does not include 53.9 statute miles of nonjurisdictional waters between the Bahamas and the EEZ.

TABLE 2.—SUMMARY OF ANCILLARY FACILITIES FOR THE TRACTEBEL CALYPSO PIPELINE PROJECT

Facility	Approximate milepost	Description
Block Valve (below ground)	36.02	Nova Southeastern University Oceanographic Center.
Meter and Pressure Regulation Station, Pig Receiver	41.72	Disturbed area near PF&L Fort Lauderdale Cooling Pond.
Block Valve (above ground)	41.83	Located at a tie-in to FGT pipeline.

Land Requirements for Construction

Construction of the onshore portion of the Tractebel Calypso project would affect a total of about 68.8 acres of land including 31.9 acres required for pipeline construction; 21.4 acres required for extra workspace; 10.0 acres required for a contractor yard; and 0.5 acres required for aboveground facilities. Total land requirements for the permanent right-of-way would be about 4.6 acres and less than 0.3 acres of land would be required for the operation of the new permanent aboveground facilities. The remaining approximately 64 acres of land affected by construction would be restored and allowed to revert to its former use.

Approximately 2.2 miles (38 percent) of the Onshore Pipeline would be directionally drilled or bored underground. Of the remaining 3.6 miles of the proposed route, approximately 2.8 miles (78 percent) would cross industrial/commercial land. About 3.4 miles (94 percent) would be installed parallel to existing roadway, pipeline, and utility rights-of-way. Tractebel Calypso would typically use a 75-foot-wide construction right-of-way width. Additional temporary work areas may be necessary for waterbody, highway, and railroad crossings; additional topsoil storage; and pipe storage and equipment yards.

Following construction and restoration of the right-of-way and temporary extra work spaces, Tractebel Calypso would retain a new 10-foot-wide permanent easement for the 24-inch-diameter pipeline. The remaining portion of the construction right-of-way would be returned to landowners for their use without restrictions after appropriate reclamation efforts are successful.

According to the applicant, constructing the offshore portion of the Tractebel Calypso project would affect 766 acres in Federal waters. Tractebel Calypso has predicted that in Florida state waters construction of the pipeline would cause temporary direct impacts to 1.7 acres of marine hardbottom habitat of which 0.3 acres is coral reef and the remainder is disturbed and/or transitional hardbottom habitat. Approximately 1.8 acres of sand bottom would be affected. Construction-generated sediment would affect an additional 4.3 acres of the spoil area, about 0.3 acres of reef, and 0.1 acres of reef-sand transitional area.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This is called ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Soils and sediments
- Water resources
- Wetlands, barrier beaches, and submerged aquatic vegetation
- Vegetation
- Fish and wildlife
- Endangered and threatened species
- Land use, recreation, and visual resources
- Air quality and noise
- Cultural resources
- Socioeconomics
- Reliability and safety
- Alternatives

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS. The Draft EIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our responses to comments received and will be used by the Commission in its decision-making process to determine whether to approve the project.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

To ensure your comments are considered, please carefully follow the instructions in the Public Participation and Scoping Meeting section of this Notice of Intent.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Tractebel Calypso, and early input from intervenors. Some of these issues are listed below. This list is preliminary and may be changed based on your comments and our analysis.

- Construction and operational effects on seagrasses, coral reefs, hard and soft bottom communities, mangroves, and aquatic organisms;
- Extent and effects of turbidity and sedimentation that may result from pipeline trenching and directional drilling in shallow waters;
- Failure or inadvertent releases during construction of the HDD segments;
- Potential effects of proposed shore approach on the Port Everglades entrance channel and on sensitive surface waters, including the Port Everglades and Intracoastal Waterway;
- Effects to wildlife and fisheries, including federally protected species, essential fish habitat and fisheries of concern, and other biological resources of concern;
- Potential fuel spills from the pipelay barges and associated vessel traffic;
- Potential effect on future land use of 27 parcels of land, and effect on 24 landowners and governmental agencies;
- Potential effects to resources and recreation associated with construction and operation within John U. Lloyd State Park;
- Effect of construction on groundwater and surface water supplies;
- Potential introduction and control of non-native plant species;
- Potential effects on federally endangered and threatened species including the wood stork, Johnson's seagrass, West Indian manatee, loggerhead sea turtle, green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle;
- Potential effects on offshore submerged cultural resources;
- Noise generated as a result of pipeline construction;
- Temporary disruption of local roadways and recreational trails during construction;
- Potential impacts on 1.7 acres of wetlands;
- Potential effect of the project on designated airport runway clearance zones;
- Cumulative effects of the proposed project with other projects, including natural gas pipelines and other utilities, which have been recently constructed or are proposed to be built in the same region and similar time frames;
- Public Safety in the vicinity of the proposed facilities.

Public Participation and Scoping Meeting

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas/Hydro Branch.
- Reference Docket No. CP01–409–000.
- Mail your comments so that they will be received in Washington, DC on or before March 14, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting the FERC will conduct in the project area. The location and time for this meeting is listed below.

Schedule for the Tractebel Calypso Pipeline Project Environmental Impact Statement Public Scoping Meeting

Date and Time, Location, Phone

March 5, 2003 at 7 p.m.—I.T. Parker, Community Center 901 N.E., Third Street, Dania Beach, FL 33004—(954) 924–3698.

The public meeting is designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Prior to the start of the meeting, company representatives will be available to informally discuss the project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the morning of March 6, 2003, representatives of Tractebel Calypso and Commission staff will be visiting some project areas. Anyone interested in participating in the site visit may meet in the parking lot of the I.T. Parker Community Center at 9AM. Individuals must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 2)[4]. Only intervenors have the right to seek rehearing of the Commission's decision.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EIS.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC, or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3791 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036]

Notice of Settlement Accord and Soliciting Comments

February 11, 2003.

Take notice that the following Settlement Accord has been filed with the Commission and is available for public inspection:

a. Type: Comprehensive Relicensing Settlement Accord With Explanatory Statement.

b. *Project No.:* P–2000–036.

c. *Date Filed:* February 6, 2003.

d. *Applicant:* Power Authority of the State of New York.

e. *Name of Project:* St. Lawrence-FDR Power Project.

f. *Location:* Located on the St. Lawrence River near Massena, in St. Lawrence County, New York. There are no Federal lands located within the project boundary.

g. *Filed Pursuant to*: Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:*

Mr. Joseph J. Seymour, Chairman and Chief Executive Officer, Power Authority of the State of New York, 30 South Pearl Street, Albany, NY 12207–3425, (518) 433–6751.

Mr. John J. Suloway, Director, Licensing Division, Power Authority of the State of New York 123 Main Street, White Plains, NY 10601–3170, (914) 287–3971.

i. *FERC Contact:* Ed Lee, (202) 502–6082 or E-Mail *Ed.Lee@ferc.gov*.

j. *Deadline Dates*: Comments due March 15, 2003.; reply comments due March 30, 2003.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Pursuant to Order No. 619, the Federal Energy Regulatory Commission (FERC) now accepts certain ''qualified documents'' via the Internet in lieu of paper filing. ''Qualified documents'' may be submitted electronically only by accessing the E-Filing link at *http://www.ferc.gov*. Comments received via e-mail are not placed in the public record.

• ''Qualified documents'' that may by submitted electronically in lieu pf paper and the procedures for e-filing ''qualified documents'' are described in FERC's User Guide for Electronic Filing of Qualified Documents, which can be accessed via FERC's website*http://www.ferc.gov/*e-filing. For assistance with filing qualified documents electronically, you can contract FERC's Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

k. Description of Filing: The Power Authority of the State of New York (NYPA) filed the Settlement Accord on behalf of itself and the U.S. Fish and Wildlife Service of the U.S. Department of the Interior; New York State Department of Environmental Conservation; New York State Department of State; New York State Office of Parks, Recreation and Historic Preservation; St. Lawrence Aquarium and Ecological Center Inc.; New York Rivers United; and the St. Lawrence Local Government Task Force. The purpose of the Settlement Accord is to resolve among the signatories all issues associated with issuance of a new license for the project regarding fish enhancement, American Eel passage facility, habitat improvements, wildlife management, St. Lawrence River Research and Education Fund, water temperature, land and vegetation management plans, shoreline stabilization plan, navigation enhancements, and recreation. The Settlement Accord specifically adopts and incorporates (1) five individual agreements, and (2) a letter of understanding between NYPA and National Marine Fisheries Service.

NYPA requests that the Commission accept and incorporate into any new license the protection, mitigation, and enhancement measures stated in the Settlement Accord. Comments and reply comments on the Settlement Accord and supporting documentation are due on the dates listed above.

l. A copy of the application is available for inspection and reproduction during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202)502–8371. In addition, the application may be viewed and/or printed via the internet through FERC's Home Page (*http://www.ferc.gov*). From FERC's Home Page on the internet, the application and other filings and issuances regarding this application are available in the Federal Energy Regulatory Records Information System (FERRIS). To access this information in FERRIS, for the St. Lawrence Hydroelectric Project license application, enter the application's docket number (*i.e.*, P–2000) and sub-docket number (*i.e.*, 036) where

specified. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy of the application is also available for inspection and reproduction from the applicant at the address in item h. above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3797 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 11, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Prohibited

Date Filed: Presenter or Requester.

1. Project No. 2816–020 2–3–03 Robert L. Carey, Jr.

Exempt

Date Filed: Presenter or Requester.

1. CP02–78–000, 2–6–03, Jeff Shenot
2. CP02–396–000, 2–6–03, S. Rene' Hypes
3. Project No. 2042–000, 2–6–03, Frank Winchell
4. Project No. 2069–007, 2–7–03, Charles Hall, Nan Allen, Dianne Rodman

Magalie R. Salas,

Secretary.

[FR Doc. 03–3798 Filed 2–14–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7452–8]

EPA Science Advisory Board; Ecological Processes and Effects Committee Meeting—Notification of a Change in the Agenda and the Request for Public Comment

Purpose of this Notice—To advise of a change in the agenda for the advisory committee meeting advertised in 68 FR 4775, January 30, 2003. As noted in that FR Notice, the Ecological Processes and Effects Committee (EPEC) of the U.S. EPA Science Advisory Board (SAB) will meet on Thursday and Friday, February 13–14, 2003. Although a formal Consultation on the EPA Office of Waters' ''Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'' was scheduled for that meeting, it has since been changed to a briefing. Other agenda items are unchanged and the meeting location remains unchanged.

In the above cited **Federal Register** notice, we stated that public comments (information, analysis or other documentation) will be accepted until February 7, 2003 on the EPEC member biosketches for the purpose of helping us to ensure a balanced panel for the Consultation that was originally planned. Since the Consultation will not take place at this time and no advice is being developed or provided by individuals on the Panel as a result of receiving briefings, we are no longer seeking comments on the biosketches. Any comments received at the address listed in the **Federal Register** notice (through the date of the meeting) will be considered in the event that the SAB conducts a formal Consultation on this topic in the future.

FOR FURTHER INFORMATION: Any member of the public wishing further information concerning this meeting, should contact Mr. Lawrence Martin, Designated Federal Officer, USEPA Science Advisory Board (1400A), Suite 6450, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–6497; fax at (202) 501–0582; or via e-mail at *martin.lawrence@epa.gov.* Information concerning this meeting can be found at the following Web site: *http://www.epa.gov/sab/panels/epecpubmtg021303.htm.*

Dated: February 7, 2003.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3841 Filed 2–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Renewal of FASAB Charter

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Renewal of FASAB Charter.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of

OMB, and the Comptroller General (the Sponsors) have established and agreed to continue an advisory committee to consider and recommend accounting standards and principles for the Federal government.

FOR FURTHER INFORMATION: Or to Obtain a Copy of the Charter, Contact: Wendy M. Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. 31 U.S.C. 3511(D), Pub. L. 92–463.

Dated: February 10, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–3768 Filed 2–14–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 24

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 24.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has issued Statement of Federal Financial Accounting Standards (SFFAS) No. 24. *Selected Standards for the Consolidated Financial Report of the United States Government.*

The Board approved the Statement in October 2002, and submitted it to FASAB principals for a 90-day review. The review period closed on January 27, 2003.

SFFAS No. 24 states for the first time that all SFFAS's apply to all Federal entities (including the consolidated Government-wide entity) unless a standard specifically provides otherwise. In addition, it clarifies that the Statement of Budgetary Resources and Statement of Financing, while relevant for agencies executing the budget, are not required for the Government-wide CFR.

However, SFFAS 24 requires new statements for the CFR, but not for agencies or departments. The new statements provide information on net operating revenue (or cost), budget surplus (or deficit), and cash. The new statements are principal CFR financial statements and are to be presented on a comparative basis.

The standards prescribed in SFFAS No. 24 are effective for periods beginning after September 30, 2001. Hard copies of the statement will be mailed to the FASAB mailing list. It is also available on the FASAB web site at *http://www.fasab.gov* or by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: February 10, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–3766 Filed 2–14–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Issuance of Statement of Federal Financial Accounting Concepts (SFFAC) No. 4

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of issuance of statement of Federal Financial Accounting Concepts (SFFAC) No. 4.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Concepts (SFFAC) No. 4, *Intended Audience and Qualitative Characteristics for the Consolidated Financial Report of the United States Government.*

The Board approved the Concept in October 2002, and submitted it to FASAB principals for a 90-day review. The review period closed on January 27, 2003.

SFFAC No. 4 identifies the primary audience of the Consolidated Financial Report of the U.S. Government (CFR) as external users represented by citizens and their intermediaries. Further, it describes the characteristics of the audience and the qualitative characteristics FASAB believes will aid in meeting the financial reporting objectives of the CFR. Finally, the concepts document provides that the CFR should be a ''general purpose'' report that should be highly understandable and timely.

The concepts prescribed in SFFAC No. 4 are effective for periods beginning after September 30, 2002. Hard copies of the concept will be mailed to the FASAB mailing list. It is also available on the FASAB web site at *http://www.fasab.gov* or by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: February 10, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–3767 Filed 2–14–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting Scheduled for February 13, 2003, Cancelled; Sunshine Act

February 11, 2003.

The Federal Communications Commission has cancelled the Open Meeting on the subjects listed below, previously scheduled for Thursday, February 13, 2003, at 445 12th Street SW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—*Title:* Revisions of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98–153). *Summary:* The Commission will consider a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking addressing the fourteen petitions for reconsideration filed in response to the First Report and Order in this proceeding. The First Report and Order established the standards that permit the unlicensed operation of ultra-wideband devices.

2—Consumer and Governmental Affairs—*Title:* Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities. *Summary:* The Commission will consider an Order to update and enhance its rules regarding access for persons with disabilities to Commission programs and activities, as found in Subpart N of Part 1 of the Commission's rules.

3—Wireline Competition—*Title:* Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98), Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147), and Appropriate

Framework for Broadband Access to the Internet over Wireline Facilities (CC Docket No 02–33). *Summary:* The Commission will consider a Report and Order concerning incumbent local exchange carriers' obligation to make elements of their networks available on an unbundled basis.

Additional information concerning this meeting may be obtained from David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3914 Filed 2–12–03; 4:13 pm]

BILLING CODE 6712–01–M

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 proposed information collections 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–I's 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 Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of The Extension For Three Years, With Revision, of the Following Reports:

Report title: Survey of Terms of Bank Lending

Agency form number: FR 2028A, FR 2028B, and FR 2028S

OMB control number: 7100–0061

Frequency: Quarterly

Reporters: commercial banks (all three reports) and U.S. branches and agencies of foreign banks (FR 2028A and FR 2028S)

Annual reporting hours: 8,095 hours

Estimated average hours per response: FR 2028A: 4.0. FR 2028B: 1.5. FR 2028S: 0.1.

Number of respondents: FR 2028A: 398. FR 2028B: 250. FR 2028S: 567.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The Survey of Terms of Bank Lending provides unique information concerning the price and certain nonprice terms of loans made to businesses and farmers by commercial banks. The reports are completed for the first full business week of the mid–month of each quarter (February, May, August, and November). The FR 2028A and B collect detailed data on individual loans made during the survey week. The FR 2028S collects the prime interest rate for each day of the survey. From these sample STBL data, estimates of the terms of business and farm loans extended during the reporting week at all insured U.S. commercial banks are constructed. The estimates for business loans are published in the quarterly E.2 release, ''Survey of Terms of Bank Lending,'' while estimates for farm loans are published in the quarterly E.15 release, ''Agricultural Finance Databook.''

Current actions: On December 3, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the Survey of Terms of Bank Lending (67 FR 71969). The notice described the Federal Reserve's proposal to revise the FR 2028A by: (1) adding a field for the date on which the terms, including pricing, for loans made under formal commitment became effective, (2) reducing the number of base pricing rate options from five to one, (3) deleting the item indicating whether loans are callable, (4) modifying the format of the recalculation and maturity date items, and (5) making minor clarifications to the instructions. The Federal Reserve also proposed to revise the FR 2028B by modifying the format of the recalculation and maturity date items. The FR 2028A and FR 2028B reporting instructions will be revised according to the proposed changes, with other minor clarifications. No changes are being made to the FR 2028S. The Federal Reserve did not receive any comments on the proposed changes. The revisions to the reporting forms and instructions will be effective for the May 2003 survey week.

Board of Governors of the Federal Reserve System, February 11, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–3822 Filed 2–14–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ruff Management LLC, Longview, Texas; to become a bank holding company by acquiring 1 percent general partner interest in Ruff Partners, Ltd., Longview, Texas, and thereby indirectly

acquire shares of First State Bank of Hallsville, Hallsville, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Charles Schwab Corporation, San Francisco, California; to acquire 100 percent of the voting shares of Charles Schwab Bank, N.A., Reno, Nevada.

Board of Governors of the Federal Reserve System, February 11, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–3823 Filed 2–14–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Grants for Education Programs in Occupational Safety and Health, Program Announcement #03001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #03001.

Times and Dates: 7:30 a.m.–8 a.m., March 3, 2003—open.

8 a.m.–6 p.m., March 3, 2003—closed.

8 a.m.–5:30 p.m., March 4, 2003—closed.

8 a.m.–12:30 p.m., March 5, 2003—closed.

Place: Embassy Suites, 10 E. River Center Blvd., Covington, KY 41011, 859.261.8400.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 03001.

Contact Person for More Information: Bernadine Kuchinski, Ph.D., Occupational Health Consultant, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio, telephone (513) 533–8511.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 5, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–3810 Filed 2–13–03; 1:15 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 am–4:30 p.m., February 26, 2003; 8 a.m.–3 p.m., February 27, 2003.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The agenda will include a discussion on the influenza vaccine ACIP recommendation; update on U.S. influenza vaccine strains; update on vaccine supply; update on smallpox program implementation; recommendations for storage of vaccines; update on IOM immunization safety review committee meetings; DTaP-HepB-IPV Vaccine for infants born to HBsAG+ mothers; availability of child and adult immunization schedule in PDA format; evidence-based tables in ACIP recommendations; public participation in formulating vaccine policy; vaccinating cochlear implant recipients for meningitis and pneumococcal disease; update on effect of pneumococcal conjugate vaccine on disease following introduction; impact of varicella vaccination program on herpes zoster; and update on the HIV vaccine working group.

Agenda items are subject to change as priorities dictate.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

Contact Person for More Information: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: February 10, 2003.

Joseph Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–3771 Filed 2–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–367, 367a, b, and c, CMS–1957, CMS–R–48]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and 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 and 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 a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program—Manufacturers; *Form No.:* 0938–0578; *Use:* Section 1927 requires drug manufacturers to enter

into and have in effect a rebate agreement with the Federal Government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 570; *Total Annual Responses:* 2,280; *Total Annual Hours:* 54,780.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* SSO Report of State Buy-In Problems and Supporting Regulation at 42 CFR 407.40; *Form No.:* CMS–1957; *Use:* The CMS–1957 is issued to assist with communications between the Social Security District Offices, Medicaid State Agencies and CMS Central Offices in the resolution of beneficiary entitlement under state buy-ins. It is used when a problem arises which cannot be resolved thru normal data exchange. *Frequency:* On occasion; *Affected Public:* Individuals or households, State, Local or Tribal Government; *Number of Respondents:* 3,000; *Total Annual Hours:* 1075.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital COP–42 CFR 482, 482.12, 482.13, 482.22, 482.27, 482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, and 485.631.; *Form No.:* CMS–R–48 (OMB # 0938–0328); *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.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Gov.; *Number of Respondents:* 6,017; *Total Annual Responses:* 6,017; *Total Annual Hours:* 3,737,303.00.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 6, 2003.

John P. Burke, III,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–3785 Filed 2–14–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–96, CMS–R–5, CMS–R–245, CMS–R–209 and CMS–718 BP, 719 BP, 720 BP, 721 BP, SUM, Staffing, SC1, and SC2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and 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 and 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 a currently approved collection; *Title of Information Collection:* Emergency and Foreign Hospital Services—Beneficiary Statement in Canadian Travel Claims and Supporting Regulations in 42 CFR, section 424.123; *Form No.:* CMS–R–96 (OMB# 0938–0484); *Use:* Payment may be made for certain Part A inpatient hospital services and Part B outpatient hospital services provided in a non-participating U.S. or foreign hospital when services are necessary to prevent the death or serious impairment of the health of the individual. This statement must be submitted by the beneficiary to support their claim for payment.; *Frequency:* On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,100; *Total Annual Responses:* 1,100; *Total Annual Hours:* 275.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Physician Certifications/Recertifications in Skilled Nursing Facilities (SNFs) Manual Instructions and Supporting Regulations in 42 CFR section 424.20; *Form No.:* CMS–R–5 (OMB# 0938–0454); *Use:* This information collection requires SNFs to keep record of physician certifications and recertifications of information such as the need for care and services, estimated duration of the SNF stay, and plan for home care; *Frequency:* On occasion; *Affected Public:* State, Local or Tribal Government, Individuals or Households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 2,068,716; *Total Annual Responses:* 883,838; *Total Annual Hours:* 441,793.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs Use of the OASIS as Part of the CoPs for HHAs and Supporting Regulations in part 484 of 42 CFR; *Form No.:* CMS–R–245 (OMB# 0938–0760); *Use:* This regulation requires HHAs to use a standard core assessment data set, the OASIS, to collect information and to evaluate adult non-maternity patients. In addition, data from the OASIS will be used for purposes of case mix adjusting patients under home health PPS and will facilitate the production of necessary case mix information at relevant time points in the patient's home health stay. Modifications have been made to currently approved OASIS forms to allow for the preservation of masking of personally identifiable information for the non-Medicare/non-Medicaid individuals; *Frequency:* Upon patient assessment; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government; *Number of Respondents:* 7,100; *Total Annual Responses:* 9,510,900; *Total Annual Hours:* 8,013,013.

4. *Type of Information Collection Request:* Extension of a currently

approved collection; *Title of Information Collection:* Medicare and Medicaid Programs; Use and Reporting OASIS Data as Part of the CoPs for HHAs and Supporting Regulations in 42 CFR 484.11 and 484.20; *Form No.:* CMS–R–209 (OMB# 0938–0761); *Use:* HHAs are required to report data from the OASIS as a condition of participation. Specifically, the above named regulations sections provide guidelines for HHAs for the electronic transmission of the OASIS data as well as responsibilities of the State agency or OASIS contractor in collecting and transmitting this information to HCFA. These requirements are necessary to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs, and to establish a prospective payment system for HHAs.; *Frequency:* Monthly; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government; *Number of Respondents:* 6,900; *Total Annual Responses:* 85,200; *Total Annual Hours:* 838,408.

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Business Proposal Formats for Quality Improvement Organizations (QIOs)—previously known as Peer Review Organizations and Supporting Regulations in 42 CFR, Section 475.101—475.107; *Form No.:* CMS–718–721 (OMB# 0938–0579); *Use:* The submission of proposal information by current QIOs and other bidders, on the appropriate forms, will satisfy CMS's need for meaningful, consistent, and verifiable data with which to evaluate contract proposals; *Frequency:* tri-annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 455.

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://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.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:* Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 6, 2003.

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. 03–3786 Filed 2–14–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: (1) TANF Data Report, ACF–199; (2) SSP–MOE Data Report, ACF–209.

OMB No.: 0970–0199.

Description: States, the District of Columbia and certain U.S. territories are required by 42 U.S.C. 611 and 45 CFR part 265 to collect on a monthly basis and report to HHS on a quarterly basis a wide variety of disaggregated case record information for their programs funded under TANF. If a respondent wants to qualify for a high performance bonus or receive a caseload reduction credit, the respondent must submit similar data for its separate state programs. A respondent may comply with these requirements by collecting and submitting case record information for its entire caseload or for a portion of the caseload that is obtained through the use of scientifically acceptable sampling methods. HHS collects the information electronically through the use of the TANF Data Report (ACF–199) and the SSP–MOE Data Report (ACF–209) and their associated TANF Sampling and Statistical Methods Manual. HHS is proposing to extend this information collection for another three years.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report, ACF–199	54	4	2,193.74	473,848
SSP–MOE Data Report	17	4	1,662	113,016
Estimated Total Annual Burden Hours				586,864

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3856 Filed 2–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: 45 CFR part 95, section F.

OMB No.: 0992–0005.

Description: The advance planning document (APD) process, established in the rules at 45 CFR part 95, subpart F, is the procedure by which States request and obtain approval for Federal financial participation in their cost of acquiring automatic data processing equipment and services. The APD submitted by the State Agency provides the Department of Health and Human Services (HHS) with the following information necessary to determine the State's need to acquire the requested ADP equipment and/or services:

1. A statement of need;

2. A requirements analysis and feasibility study;

3. A cost benefit analysis;

4. A proposed activity schedule; and,

5. A proposed budget.

DHHS' determination of a State agency's need to acquire requested ADP equipment of services is authorized at sections 402(a)(5), 452(a)(1), 1902(a)(4) and 1102 of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Advance Planning Document	50	1.84	60	5,520
RFP and Contract	50	1.54	1.5	115.5
Emergency Funding Request	27	1	1	27
Service Agreements	14	1	1	14
Biennial Reports	50	1	1.5	75
Estimated Total Annual Burden Hours				5,751.5

Respondents

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3857 Filed 2–14–03; 8:45 am]

BILLING CODE 484–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Building Strong Families Demonstration and Evaluation.

OMB No.: New collection.

1. *Description:* The Building Strong Families (BSF) project is an important opportunity to learn whether well-designed interventions can help couples fulfill their aspirations for a healthy marriage and a strong family. The project will assess the net impact of interventions with low-income, unwed couples beginning around the time of a child's birth. The programs will be designed to help such couples strengthen their relationship, achieve a healthy marriage if that is the path they choose, and thus enhance child and family well-being. The programs will be designed around two main components. First, the programs will provide instruction and support to improve marriage and relationship skills and enhance couples' understanding of marriage. This focus is the distinctive component of the BSF project. In addition, BSF programs will provide a variety of other services that could help low-income couples sustain a healthy relationship (*e.g.,* employment assistance). The early project period will be used to gather information from multiple sources in order to develop program models to be tested and evaluated. One important source of information will be low-income unwed parents and newly married couples.

2. *Respondents:* The respondents for the Focus Group Protocols and information sheets are low-income, unmarried, expectant or recent parents and newly married couples with children who volunteer to participate in focus groups. The attendance goal for each group is eight to 12 people in a total of 26 focus groups for a total of 208 to 312 respondents. Eight types of focus groups are planned: mothers alone, fathers alone, unwed couples, and recently married couples in each of two settings. The planned settings are: (1)

Selective settings (*i.e.,* venues selected in which we have or can establish relationships with organizations that can identify and encourage participation by low-income couples/parents) in order to gain information and insights early in the project development period; and (2) site-specific settings, after programs become part of the formal study, to help inform site-specific program designs to address needs among the target population. The selective settings will be the focus of the first round of information collection.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Focus Group Protocol	144	1	1.5	216
Information Sheet	144	1	.10	14.4
Estimated Total Annual Burden Hours				230.4

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–3858 Filed 2–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project: Collection of data on American Indian and Alaska Native needy families receiving temporary assistance from programs operated by American Indian and Alaska Native entities (Indian tribes).

Title: Tribal Temporary Assistance For Needy Families Program (Tribal TANF) Data Reporting Instructions and Requirements.

OMB No: 0970–0215.

Description: 42 U.S.C. 612 (section 412 of the Social Security Act—the Act—as amended by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996—PRWORA) mandates that Federally recognized Indian tribes with an approval tribal TANF program collect and submit to the Secretary of the Department of Health and Human Services (HHS) data on the recipients served by their programs. Instructions and requirements for submitting that data are the subject of this request for comments.

Respondents: Indian tribes that have an approved tribal TANF program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal TANF Data reports	56	24	50	67,200
Estimated Total Burden:				67,200

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 10, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–3859 Filed 2–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0034]

Agency Information Collection Activities; Proposed Collection; Comment Request; FDA Safety Alert/ Public Health Advisory Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for the FDA Safety Alert/Public Health Advisory Readership Survey.

DATES: Submit written or electronic comments on the collection of information by April 21, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Safety Alert/Public Health Advisory Readership Survey (OMB Control No. 0910–0341)—Extension

Section 705(b) (21 U.S.C. 375(b)) of the Federal Food, Drug, and Cosmetic Act (the act) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH) communicates these risks to user communities through two publications: (1) The FDA Safety Alert and (2) the Public Health Advisory. Safety alerts and advisories are sent to organizations such as hospitals, nursing homes, hospices, home health care agencies, manufacturers, retail pharmacies, and other health care providers. Subjects of previous alerts included spontaneous combustion risks in large quantities of patient examination gloves, hazards associated with the use of electric heating pads, and retinal photic injuries from operating microscopes during cataract surgery.

Section 1701(a)(4) (42 U.S.C. 300u(a)(4) of the Public Health Service Act authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness, and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly actions for reducing risk are explained, the timeliness of the information, and whether the reader has taken any action to eliminate or reduce risk as a result of information in the alert. Subjects will also be asked whether they wish to receive future alerts electronically, as well as how the safety alert program might be improved.

The information collected will be used to shape FDA's editorial policy for the safety alerts and public health advisories. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content, format, and method of dissemination.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
308	3	924	.17	157

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the safety alert and public health advisory program, it is estimated that an average of three collections will be conducted a year. The total burden of response time is estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey and through discussions with the contacts in trade organizations.

Dated: February 10, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3816 Filed 2–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0280]

Agency Information Collection Activities; Announcement of OMB Approval; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Filing Objections and Requests for a Hearing on a Regulation or Order'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 29, 2002 (67 FR 71178), 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 0910–0184. The approval expires on February 28, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: February 10, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3817 Filed 2–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–63), notice is hereby given of the following Federal advisory committee meeting. The meeting will be open to the public.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: March 27, 2003, 5 p.m.–7 p.m.; March 28, 2003, 8:30 a.m.–5 p.m.; March 29, 2003, 9 a.m. to 5:30 p.m.; March 30, 2003, 8 a.m.–10:30 a.m.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009, (202) 797–2000.

Agenda: The agenda will focus on meeting with Agency management to determine the desired areas of recommendations for the Council to address in the upcoming year. The Council will also review the new NHSC Legislation to discuss possible areas of recommendations. Agenda items and times are subject to change as priorities dictate.

For Further Information Contact: Tira Robinson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 594–4140.

Dated: February 11, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–3814 Filed 2–14–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for CSAT Practice Improvement Collaborative Cooperative Agreements: Strengthening Treatment Access and Retention (Short Title: Strengthening Access and Retention (SAR)).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Request for Applications (RFA), including Part I, *CSAT Practice Improvement Collaborative Cooperative Agreements: Strengthening Treatment Access and Retention (TI 03–006) (Short Title: Strengthening Access and Retention (SAR)),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. Funds FY 2003	Est. No. of awards	Project period
CSAT Practice Improvement. Collaborative Cooperative. Agreements: Strengthening. Treatment Access and Retention	May 12, 2003	$2.5 million	12–14	3 years

The actual amount available for the award may vary depending on unanticipated program requirements and actual SAMHSA appropriations. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of State Training and Evaluation of Evidence-Based Practices grants. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund the grants. This program is authorized under Section 509 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications

were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: The National Clearinghouse for Alcohol and Drug Information (NCADI): (800) 789–2647 or (800–487–4889 TDD).

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on ''Grant Opportunities'').

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is accepting applications for fiscal year (FY) 2003 funds for cooperative agreements to implement effective clinical and administrative practices to improve client access and retention in substance abuse treatment.

Eligibility: Public and domestic private nonprofit entities are eligible to apply, including units of State or local government, tribal governments and organizations, and community-based organizations, including faith-based organizations.

Since SAMHSA/CSAT believes that only an existing, experienced, and appropriately credentialed provider with demonstrated capacity and expertise will be able to conduct the required practice improvement activities, the treatment providers implementing the proposed project must meet three criteria:

- The provider must have been providing treatment services for a minimum of two years prior to the date of this application.
- If the applicant organization is not a direct provider of substance abuse treatment services, the applicant must document a commitment from an experienced, licensed substance abuse treatment provider to implement the proposed project.
- The provider must be in compliance, at the time the application is submitted, with all local, city, county and State requirements for licensing, accreditation, or certification.

Availability of Funds: It is expected that approximately $2.5 million will be available for twelve to fourteen awards in FY 2003. The average annual award will be $175,000 to $200,000 in total costs (direct and indirect). Applications with proposed Federal budgets that exceed $200,000 will be returned without review.

Period of Support: Awards may be requested for up to 3 years.

Criteria for Review and Funding:

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on program issues, contact: Suzanne Cable, Division of Services Improvement, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9713, [e-mail] *scable@samhsa.gov;* or Frances Cotter, MA, MPH, Division of Services Improvement, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9713, [e-mail] *fcotter@samhsa.gov.*

For questions on program issues related to rural populations in need of medication assisted therapy for addiction to heroin or prescription opiates contact: Jacqueline Hendrickson, Division of Pharmacologic Therapies, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1109, [e-mail] *jhendri@samhsa.gov.*

For questions on grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, [e-mail] *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the

applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to:

Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: February 10, 2003.

Richard Kopanda,

Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–3815 Filed 2–14–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Certificate of Degree of Indian or Alaska Native Blood Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed agency information collection activities; comment request.

SUMMARY: The Bureau of Indian Affairs is seeking comments from the public on an extension of an information collection from persons seeking proof of American Indian or Alaska Native blood, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number 1076–0153 will be used to establish that the applicants meet requirements for official recognition as an American Indian or Alaska native for purposes of eligibility determination and participation in programs administered through the U. S. Bureau of Indian Affairs.

DATES: Submit comments on or before April 21, 2003.

ADDRESSES: Written comments can be sent to Duane Bird Bear, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop: 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Newman, Tribal Government Services Specialist/Enrollment, at 202–513–7641.

SUPPLEMENTARY INFORMATION: This collection was originally approved and assigned OMB Control No. 1076–0153 when it was submitted with a proposed rulemaking, 25 CFR part 70, which was published in the **Federal Register** on April 18, 2000 (66 FR 20775). The proposed rulemaking has not been finalized due to numerous requests from individuals and Indian tribal governments for extensions of time for comments. Several extensions of time for the submission of public comments were granted. The period for public comment ended on December 31, 2001. The Bureau of Indian Affairs, through the development of the proposed rule, is attempting to bring its decision-making procedures regarding the issuance of CDIB forms in line with the Administrative Procedures Act, 5 U.S.C. 553, as mandated by section 552, and as directed in the 1986 decision of the Interior Board of Indian Appeals (IBIA), Office of Hearings and Appeals, U.S. Department of the Interior, in *Morgan Underwood, Sr.* v. *Deputy Assistant Secretary—Indian Affairs (Operations),* 93 I.D. 13, 11 IBIA 3 (IBIA, January 31, 1986). However, there is legal support for the information collection in that currently existing federal laws and regulations require some form of proof of Indian blood for various purposes, including ownership of lands held in trust by the United States for benefit of Indian landowners who are members of federally-recognized Indian tribes (including Alaska Native villages), especially at those locations where the Indian tribe or Alaska native village has minimum Indian blood degree requirements for membership.

The public is advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For example, this collection is listed by OMB as Control No. 1076–0153, and it expires 06/30/2003. The response is voluntary to obtain or retain a benefit.

We are requesting comments about the proposed collection to evaluate:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made;

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility;

(c) The quality, utility, and clarity of the information to be collected; and

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

Please submit your comments to the person listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, are open for public review during (regular business hours). If you wish your name and address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

Type of review: Renewal.

Title: Request for Certificate of Degree of Indian or Alaska Native Blood.

Affected Entities: Individual Indian Applicants.

Size of Respondent Pool: 287,400.

Number of Annual Responses: 287,400.

Hours per response: 1.5.

Total Annual Hours: 433,500.

Dated: February 6, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–3830 Filed 2–14–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1610–DS]

Notice of Availability of the Supplemental Draft Environmental Impact Statement for the Jack Morrow Hills Coordinated Activity Plan/Draft Green River Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Supplemental Draft Environmental Impact Statement (SDEIS) for the Jack Morrow Hills Coordinated Activity Plan (CAP)/Draft Green River Resource Management Plan (RMP) Amendment, Wyoming.

SUMMARY: The Bureau of Land Management (BLM), in cooperation with the State of Wyoming, county governments, and conservation districts located within the planning area, have prepared an SDEIS for the Jack Morrow Hills CAP/Draft RMP Amendment. This is an integrated activity planning effort for the BLM-administered public lands and resources in the Jack Morrow Hills area, located in Sweetwater, Fremont, and Sublette Counties, Wyoming. When completed, the EIS for the Jack Morrow Hills CAP/Green River RMP Amendment will provide more specific management direction to address potential conflicts among energy resources development, recreational activities and facilities, livestock

grazing, important wildlife habitat, cultural resources, and other important resource and land uses in the planning area. The planning area encompasses approximately 622,000 acres, of which 585,000 acres are public land surface and Federal mineral estate administered by the BLM through its Rock Springs Field Office in Rock Springs, Wyoming. The SDEIS documents the analysis of five alternatives, ranging from preservation to full development. Ultimately, the approved EIS for the Jack Morrow Hills CAP/RMP Amendment will include land and resource management decisions for fluid mineral leasing and mineral location in the core area, where these decisions were deferred in the Green River RMP prepared in 1997. These decisions will constitute an amendment to the Green River RMP. Other decisions made in the Green River RMP, in the balance of the planning area, may also be modified, resulting in further amendment to the RMP. Other actions resulting from this planning effort are expected to include the use of adaptive management approaches to decision making. Areas involved include: transportation planning, off-highway-vehicular use designations and designation of roads for use, livestock grazing practices, recreational activities and facilities, identification of rights-of-way windows and concentration and avoidance areas, and prescriptions for managing wildlife habitat.

DATES: Written comments on the SDEIS for the Jack Morrow Hills CAP/ Draft RMP Amendment will be accepted for 90 days following the date the Environmental Protection Agency publishes the notice of availability of the SDEIS for the Jack Morrow Hills CAP/ Draft RMP Amendment in the **Federal Register**, projected to be February 14, 2003. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, or mailings.

ADDRESSES: Written comments should be sent to: Jack Morrow Hills CAP Team Leader, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901. Please visit Web site *www.wy.blm.gov/jmhcap* for a link to submit comments by electronic mail. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Copies of the SDEIS for the Jack Morrow Hills CAP/Draft RMP Amendment are available in the Rock Springs Field Office at the above address; the Bureau of Land Management Lander Field Office, 1335 Main Street, Lander, Wyoming 82520; and the Bureau of Land Management Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. The supplemental draft EIS will also be available on the internet at the above Web site address. Anyone wishing to be placed on the mailing list for the Jack Morrow Hills CAP planning effort should contact the Rock Springs Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Acting Field Manager, or Renee Dana, Jack Morrow Hills CAP Team Leader, Rock Springs Field Office, Bureau of Land Management, at the above address; or phone 307–352–0256.

SUPPLEMENTARY INFORMATION: Based upon concerns raised by the public during preparation of the Green River RMP, the BLM is now preparing the SDEIS for the Jack Morrow Hills CAP/ Draft RMP Amendment. When completed, the EIS for the Jack Morrow Hills CAP/RMP Amendment will provide management direction for the protection of important resources (*e.g.*, desert elk and other big game habitat, unique sand dune-mountain shrub habitat, unstabilized-stabilized sand dunes), while allowing for appropriate levels of leasing and development of energy resources, recreational activities, livestock grazing, and other activities. The planning area encompasses the Steamboat Mountain, Greater Sand Dunes, Oregon Buttes, and White Mountain Petroglyphs Areas of Critical Environmental Concern (ACEC). There are also seven Wilderness Study Areas (WSAs) and part of the South Pass Historic Landscape ACEC located in the planning area.

The entire planning area contains about 622,330 acres of Federal, State, and private lands. The core area, where the Green River RMP fluid minerals leasing and mineral location decisions have been deferred, contains approximately 85,000 acres. This planning effort addresses the level and timing of mineral leasing and development, while sustaining other important land and resource uses such as big game habitat, recreation, and livestock grazing. Other actions considered in this planning effort include use of adaptive management approaches to decisionmaking. Based on monitoring of actual impacts and effectiveness of management, BLM proposes to adapt management practices for transportation planning, off-highway-vehicular use designations and designation of roads for use, livestock grazing practices, recreational activities and facilities, identification of rights-of-way corridors and avoidance areas, and prescriptions for managing wildlife habitat.

Public participation has been sought through scoping, public meetings, and field trips to ensure that this planning effort addresses all issues and concerns from those interested in the management of the public lands within the planning area.

The BLM's preferred alternative consists of management actions from the other alternatives and a few actions that are unique to the Preferred Alternative. The Preferred Alternative employs the technique of Adaptive Management (AM). AM is a process of studying and monitoring the effects of incremental implementation of management decisions. The AM process includes identification, selection, and monitoring of indicators and thresholds. These measures are chosen to clarify and enhance information about the effect of land management decisions. Existing decisions are modified based on the new information and another round of adaptive decisions is begun. Opportunities for public participation will be provided throughout the AM process. Development of the preferred alternative was based on public comment and the analysis of the other alternatives and was formulated to represent the best mix and balance for a multiple use land and resource management activity plan for the BLM-administered public lands and resources in the planning area. Comments regarding the AM process are important to assist in the final document as it relates to process, thresholds, and monitoring indicators.

There are seven existing wilderness study areas (WSAs) within the planning area. Until Congress acts, the WSAs will be managed under the Interim Wilderness Management Policy.

Alan L. Kesterke,

Acting State Director.

[FR Doc. 03–2369 Filed 2–12–03; 4:51 pm]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–03–1310–DO]

Notice of Intent to Prepare an Environmental Impact Statement on a Proposed Development of Oil Facilities in the National Petroleum Reserve—Alaska and the Colville River Delta

AGENCY: Bureau of Land Management; Alaska State Office, Interior.

ACTION: Notice of intent (NOI) to prepare an Environmental Impact Statement (EIS) for full field development in connection with ConocoPhillips's Alpine Satellite Development Program within the National Petroleum Reserve—Alaska (NPR–A) and in the Colville River Delta.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) Alaska State Office will be preparing a full field development EIS in connection with the ConocoPhillips Alpine Satellite Development Program. The BLM is the lead Federal agency in the development of this EIS. The United States Army Corps of Engineers (USACE), the Environmental Protection Agency (EPA), and the State of Alaska are cooperating agencies. The project area is located on the North Slope of Alaska in the Colville River Delta and in the northeast portion of the NPR–A.

This EIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), other relevant laws and regulations, and the management policies of the BLM, the USACE, EPA, and the State of Alaska. The BLM will work collaboratively with interested parties to identify the issues concerning the project that need to be addressed in the EIS, assure an appropriate range of alternatives, and develop mitigation that is suited to local, regional, and national needs and concerns. The public scoping process will help identify these issues, alternatives, and potential mitigation, as well as help provide resource, socio-economic, subsistence, and other valuable information for the development of the EIS.

DATES: This notice initiates the public scoping process. Scoping comments can be submitted in writing to the address listed below and will be accepted through March 31, 2003. All public meetings will be announced through the local news media, a mailing, and the web site developed for the project, *http://www.alpine-satellites-eis.com.*

Public Participation: In order to ensure local community participation and input, public scoping meetings will be held in Anchorage, Barrow, Fairbanks, and Nuiqsut. In addition to the scoping process, there will be opportunities for public participation and comment on the draft EIS.

ADDRESSES: Written comments may be mailed to Alpine Satellite Development Program EIS, Entrix, Inc., 3701 East Tudor Road, Suite 205, Anchorage, Alaska 99507; faxed to 907–563–0439; hand-delivered to Entrix, Inc., 3701 East Tudor Road, Suite 205, Anchorage, Alaska or to the BLM Public Information Center in the Federal Building, 222 W. 7th Avenue, Anchorage, Alaska; or forwarded electronically through the project website at *http://www.alpine-satellites-eis.com.* Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Jim Ducker, Telephone 907–271–3130; email *Jim_Ducker@blm.gov.*

SUPPLEMENTARY AND BACKGROUND INFORMATION: The EIS will analyze the development proposal submitted by ConocoPhillips Alaska, Inc (CPAI). The company's proposal includes development of two oil and gas accumulations in the Colville Delta east of NPR–A and three accumulations within NPR–A. The EIS also will examine full field development of additional well sites and one or more new processing facilities within the field.

The development on Federal lands within NPR–A is subject to the management direction provided by BLM's Record of Decision for the Northeast National Petroleum Reserve-Alaska Integrated Activity Plan/Environmental Impact Statement (Northeast NPR–A IAP/EIS). The Record of Decision for this full field development EIS may amend the Northeast NPR–A IAP/EIS. Any amendment, including exceptions to requirements to the Northeast NPR–A IAP/EIS, would be limited to those necessary for the development authorized by BLM following completion of this EIS and will not constitute a general amendment of the Northeast NPR–A IAP/EIS.

CPAI currently operates their Alpine Central Processing Facility (ACPF) near Nuiqsut, Alaska. CPAI has proposed to develop oil and gas from five satellites. Two satellites known as CD–3 (CD North during exploration) and CD–4 (CD South) are in the Colville Delta. Three other proposed satellites known as CD–5, CD–6, and CD–7 (Alpine West, Lookout, and Spark, respectively, during exploration) are in the NPR–A. The CD–3 and CD–4 satellite locations involve lands owned, respectively, by the State of Alaska and by Kuukpik Corporation, a Native-owned corporation created by the Alaska Native Claims Settlement Act (ANCSA). The state and another ANCSA corporation, the Arctic Slope Regional Corporation (ASRC), own the oil and gas associated with these two satellites. CD–5 is proposed to be located within NPR–A on Kuukpik land and an ASRC oil and gas lease. CD–6 and CD–7 are located on oil and gas leases in the Northeast portion of NPR–A that are administered by the BLM.

CPAI's proposed development of CD–3 would consist of a gravel pad capable of supporting up to 32 wells. The site would also contain a gravel airstrip that would be used for access to the site. The proposed development of CD–4 would include a gravel pad capable of supporting up to 32 wells and the construction of a 3.6-mile gravel road that would connect the site to the Alpine facility. The proposed CD–5 would require a gravel pad capable of supporting 20–30 wells and the construction of approximately 3 miles of gravel road with a vehicle-capable bridge to cross the Nigliq Channel. The proposed CD–6 development would require a gravel pad capable of supporting up to 30 wells and the construction of approximately 10 miles of all weather gravel road that would connect to CD–5. The proposed CD–7 production site development would require a gravel pad capable of supporting up to 30 wells and the construction of approximately 6 miles of gravel road that would connect CD–6 and CD–7.

Utility lines would connect each of the satellite pads to ACPF. Oil and gas products produced at these sites would be transported by a pipeline to the ACPF and after processing the finished product would be transported through an existing pipeline to the Kuparuk facility and from Kuparuk through

existing pipelines to the Trans-Alaska Pipeline System.

Henri R. Bisson,

State Director, Bureau of Land Management, Alaska State Office.

[FR Doc. 03–3821 Filed 2–14–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–5101–00–A199; AZA 017002]

Notice of Application, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of application.

SUMMARY: In accordance with regulations found at 43 CFR 2882.3 (b) the Bureau of Land Management has received a right-of-way application from Red Lake Gas Storage L.P. (Red Lake). Red Lake proposes to construct an underground natural gas storage facility on private lands approximately 30 miles north of Kingman, Arizona. The storage facility would consist of two solution mined salt caverns and appurtenant facilities. Portions of the project would affect public lands administered by the Bureau of Land Management (BLM), Kingman Field Office. Subsequently, Red Lake has submitted an application requesting a right-of-way for a 30-mile-long natural gas pipeline (36-inch diameter), access road, brine disposal pipeline (18-inch diameter), interconnect facility/meter station (5.0 acres), and extra work space during construction (8.01 acres).

Interested parties may view the application at the BLM, Kingman Field Office located at 2475 Beverly Avenue, Kingman, Arizona. The office hours are 7:30 a.m. to 4:30 p.m. Monday through Friday. The application may also be viewed at the Kingman Public Library located at 3269 N. Burbank Street, Kingman, Arizona. The Library hours are: Monday, Friday and Saturday from 10 a.m. to 6 p.m.; Tuesday from 9 a.m. to 8 p.m.; Wednesday from 10 a.m. to 8 p.m.; Thursday from 9 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Lucas Lucero, 602–417–9532.

Dated: December 19, 2002.

Ruben Sanchez,

Acting Field Manager.

[FR Doc. 03–3770 Filed 2–14–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0136).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 206, subpart C, Federal Oil. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled: ''30 CFR Part 206, Subpart C, Federal Oil.''

DATES: Submit written comments on or before March 20, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subpart C, Federal Oil.

OMB Control Number: 1010–0136.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS assists the Secretary in performing the royalty management functions.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, requires that the Secretary ''establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner.'' In order to accomplish these tasks, MMS developed valuation regulations for Federal leases at 30 CFR part 206, subpart C. These regulations were published as a final rule in the **Federal Register** on March 15, 2000 (65 FR 14022). Market value is a basic principle underlying royalty valuation. Consequently, these regulations include methods to capture the true market value of crude oil produced from Federal leases, both onshore and offshore.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to assure that the royalties are paid appropriately. The valuation regulations at 30 CFR part 206, subpart C, require companies to collect and/or submit information used to value their Federal oil.

MMS is requesting OMB's approval to continue to collect this information. Not collecting the information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive

nature included in this information collection.

Frequency: Annually.

Estimated Number and Description of Respondents: 69 Federal lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 12,431 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

30 CFR 206 section	Reporting requirements	Burden hours per response	Annual number of responses	Annual burden hours
206.103 (a), (b), (c), and (e)	Calculate value of oil not sold at arm's-length	Category 1 = 222.50 [1]	13	2,892
		Category 2 = 116.00 [2]	4	464
		Category 3 = 31.25 [3]	28	875
	Obtain MMS approval for tendering program	400	2	800
	Obtain MMS approval for alternative valuation methodology.	400	2	800
	Obtain MMS approval to use value determined at refinery.	330	1	330
206.107(a)	Request a value determination from MMS	330	8	2,640
206.109(c)(2)	Request to exceed regulatory limit—Form MMS–4393.	Burden covered under OMB Control Number 1010–0095.		
206.110(b), (c), and (e)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under an arm's-length contract.	330	1	330
	Propose transportation cost allocation method to MMS when transporting gaseous and liquid products under an arm's-length contract.	330	1	330
	You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.	330	1	330
206.110(c)(1) and 206.111(1)(2)	Amend your Form MMS–2014 if MMS rejects your cost allocation.	Burden covered under OMB Control Number 1010–0140.		
206.111(g), (k), and (l)	Propose change of depreciation method for non-arm's-length transportation allowances to MMS.	330	1	330
	Propose transportation cost allocation method to MMS when transporting more than one liquid product under a non-arm's-length contract.	330	1	330
.	Propose transportation cost allocation method to MMS when transporting gaseous and liquid product under a non-arm's-length contract.	330	1	330
206.112(b) and (f)	Request MMS approval for location/quality adjustment under non-arm's-length exchange agreements.	330	1	330
	Request MMS for location/quality adjustment when information is not available.	330	4	1,320
206.114 and 115(a)	Report a separate entry for transportation allowances—Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
Total			69	12,431

[1] Category 1 lessees are companies with over 30 million barrels of annual domestic production.
[2] Category 2 lessees are companies with between 10 and 30 million barrels of annual domestic production.
[3] Category 3 lessees are companies with less than 10 million barrels of annual domestic production.

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a **Federal Register** notice (67 FR 62985) on October 9, 2002, announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by March 20, 2003.

Public Comment Policy: We will post all comments in response to this notice on our web site at *www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 6, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–3788 Filed 2–14–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1371]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), Justice

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *http://www.it.ojp.gov/global.*

DATES: The meeting will take place on Tuesday, April 1, 2003, from 1 p.m. to 5 p.m. ET, and Wednesday, April 2, 2003, from 9 a.m. to 12 Noon ET.

ADDRESSES: The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202; Phone: (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone: (202) 616–0532. [note: this is not a toll-free number]; E-mail: *mccrearj@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a *space available* basis. *Access to the meeting will not be allowed without registration.* All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the Designated Federal Employee (DFE).

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 03–3787 Filed 2–14–03; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Science Foundation

ACTION: Submission for OMB Review; Comment Request Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 69574 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW Room 10235, Washington DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of NSF Support for Undergraduate Research Opportunities (URO).

OMB Number: 3145–0121.

Type of Request: Intent to seek approval to reinstate an information collection for one year.

Abstract: ''Evaluation of NSF Support for Undergraduate Research Opportunities (URO)''.

Proposed Project: The National Science Foundation (NSF) manages a number of programs that provide meaningful research experiences for undergraduate students. This suite of programs include: Research Experiences for Undergraduates (REU), both the Site and Supplement components; Research in Undergraduate Institutions (RUI); the undergraduate research components in several of NSF's large research centers programs, *e.g.*, Engineering Research Centers (ERC) Programs, Science and Technology Centers (STCs); and several institution-wide human resources development programs in which undergraduate research experiences are often one component.

These Programs provide a wide range of U.S. undergraduate students with opportunities to conduct hands-on research under the mentorship of graduate students, postdoctoral fellows, and faculty in various types of higher education institutions, including small liberal arts colleges, minority-serving institutions, single-sex institutions, comprehensive universities, research universities, as well as non-profit institutions in which science or engineering research is conducted.

The purpose of the proposed evaluation is to examine the impact of undergraduate research experiences supported by NSF on the undergraduate student and faculty and other mentors who participate. Study questions include: Why do undergraduates choose to participate in research activities? What are the perceived advantages and disadvantages to faculty for mentoring undergraduates in research activities? What are the criteria for selecting students for research activities? What kinds of activities comprise undergraduate ''research'' experiences? How do undergraduate research experiences affect students' decisions about their academic and work future?

Use of the Information: The information will allow NSF to review its portfolio of programs in which a substantial number of undergraduates participate in research projects of faculty and other mentors to determine whether there needs to be any rebalancing. In addition, it will include an inventory of undergraduate research opportunities around the U.S. and contribute to the literature on best practices in undergraduate research experiences.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Individuals.

Estimated Number of Respondents: 9,333.

Estimated Total Annual Burden on Respondents: 4,328 hours.

Frequency of Responses: One time.

Dated: February 12, 2003.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–3825 Filed 2–14–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. (as shown in Attachment 1), License Nos. (as shown in Attachment 1) EA–03–009]

In the Matter of: All Pressurized Water Reactor Licensees; Order Modifying Licenses (Effective Immediately)

I

The Licensees identified in the Attachment to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of pressurized water reactor (PWR) nuclear power plants in accordance with the Atomic Energy Act of 1954 and 10 CFR part 50.

II

The reactor pressure vessel (RPV) heads of PWRs have penetrations for control rod drive mechanisms and instrumentation systems. Nickel-based alloys (*e.g.*, Alloy 600) are used in the penetration nozzles and related welds. Primary coolant water and the operating conditions of PWR plants can cause cracking of these nickel-based alloys through a process called primary water stress corrosion cracking (PWSCC). The susceptibility of RPV head penetrations to PWSCC appears to be strongly linked to the operating time and temperature of the RPV head. Problems related to PWSCC have therefore increased as plants have operated for longer periods of time. Inspections of the RPV head nozzles at the Oconee Nuclear Station, Units 2 and 3 (Oconee), in early 2001 identified circumferential cracking of the nozzles above the J-groove weld, which joins the nozzle to the RPV head. Circumferential cracking above the J-groove weld is a safety concern because of the possibility of a nozzle ejection if the circumferential cracking is not detected and repaired.

Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), which is incorporated into NRC regulations by 10 CFR 50.55a, ''Codes and standards,'' currently specifies that inspections of the RPV head need only include a visual check for leakage on the insulated surface or surrounding area. These inspections may not detect small amounts of leakage from an RPV head penetration with cracks extending through the nozzle or the J-groove weld. Such leakage can create an environment that leads to circumferential cracks in RPV head penetration nozzles or corrosion of the RPV head. In response to the inspection findings at Oconee and because existing requirements in the ASME Code and NRC regulations do not adequately address inspections of RPV head penetrations for degradation due to PWSCC, the NRC issued Bulletin 2001–01, ''Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles,'' dated August 3, 2001. In response to the Bulletin, PWR Licensees provided their plans for inspecting RPV head penetrations and the outside surface of the heads to determine whether any nozzles were leaking.

In early March 2002, while conducting inspections of reactor vessel head penetrations prompted by Bulletin 2001–01, the Licensee for the Davis-Besse Nuclear Power Station (Davis-Besse) identified a cavity in the reactor vessel head near the top of the dome. The cavity was next to a leaking nozzle

with a through-wall axial crack and was in an area of the reactor vessel head that the Licensee had left covered with boric acid deposits for several years. On March 18, 2002, the NRC issued Bulletin 2002–01, ''Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity,'' which requested PWR Licensees to provide information on their reactor vessel head inspection and maintenance programs, the material condition of their reactor vessel heads, and their boric acid inspection programs. In their responses, the Licensees provided information about their boric acid inspection programs and their inspections and assessments to ensure that their respective plant did not have reactor vessel head degradation like that identified at Davis-Besse.

The experience at Davis-Besse and the discovery of leaks and nozzle cracking at other plants reinforced the need for more effective inspections of RPV head penetration nozzles. The absence of an effective inspection regime could, over time, result in unacceptable circumferential cracks in RPV head penetration nozzles or in the degradation of the RPV head by corrosion. These degradation mechanisms increase the probability of a more significant loss of reactor coolant pressure boundary through ejection of a nozzle or other rupture of the RPV head. The NRC issued Bulletin 2002–02, ''Reactor Pressure Vessel Head and Vessel Head Penetration Nozzle Inspection Programs,'' dated August 9, 2002, requesting that Licensees provide information about their inspection programs and any plans to supplement existing visual inspections with additional measures (*e.g.*, volumetric and surface examinations). Licensees have responded to Bulletin 2002–02 with descriptions of their inspection plans for at least the first refueling outage following the issuance of Bulletin 2002–02 or with a schedule to submit such descriptions before the next refueling outage. Many of the Licensees' responses to Bulletin 2002–02 did not describe long-term inspection plans. Instead the Licensees stated that they would follow guidance being developed by the industry-sponsored Materials Reliability Program.

Inspections performed at several PWR plants in late 2002 found leakage and cracks in nozzles or J-groove welds that have required repairs or prompted the replacement of the RPV head. In addition, as discussed in NRC Information Notice 2003–02, ''Recent Experience with Reactor Coolant System Leakage and Boric Acid Corrosion,'' issued January 16, 2003, leakage has recently occurred at some plants from connections above the RPV head and has required additional assessments and inspections to ensure that the leakage has not caused significant degradation of RPV heads.

III

Based on recent experience, current inspection requirements in the ASME Code and related NRC regulations do not provide adequate assurance that reactor coolant pressure boundary integrity will be maintained for all combinations of construction materials, operating conditions, and operating histories at PWRs. The long-term resolution of RPV head penetration inspection requirements is expected to involve changes to the ASME Code and NRC regulations, specifically 10 CFR 50.55a. Research being conducted by the NRC and industry is increasing our understanding of material performance, improving inspection capabilities, and supporting assessments of the risks to public health and safety associated with potential degradation of the RPV head and associated penetration nozzles. These research activities are important to the long term development of revisions to the ASME Code and NRC regulations.

The operating history of PWRs supports a general correlation among certain operating parameters, including the length of time plants have been in operation, and the likelihood of occurrence of PWSCC of nickel-based alloys used in RPV head penetration nozzles. Bulletin 2002–02 presented a three-tier categorization of susceptibility to RPV head penetration nozzle degradation based on reactor operating durations and temperatures. Licensees' responses to the Bulletin included an estimate of the effective degradation years (EDY) and the appropriate categorization of each plant into one of the three susceptibility categories. Each Licensee proposed an inspection plan for RPV head penetrations based upon the susceptibility to degradation via PWSCC (as represented by the value of EDY calculated for the facility). In addition, recent operating experience has shown that, under certain conditions, leakage from mechanical and welded connections above the RPV head can lead to the degradation of the low alloy steel head by boric acid corrosion.

Revising the ASME Code and subsequently the NRC regulations will take several years. The Licensees' actions to date in response to the NRC bulletins have provided reasonable assurance of adequate protection of public health and safety for the near term operating cycles, but cannot be relied upon to do so for the entire interim period until NRC regulations are revised. Additional periodic inspections of RPV heads and associated penetration nozzles at PWRs, as a function of the unit's susceptibility to PWSCC and as appropriate to address the discovery of boron deposits, are necessary to provide reasonable assurance that plant operations do not pose an undue risk to the public health and safety. Consequently, it is necessary to establish a minimum set of RPV head inspection requirements, as a supplement to existing inspection and other requirements in the ASME Code and NRC regulations, through the issuance of an Order to PWR Licensees.

It is appropriate and necessary to the protection of public health and safety to establish a clear regulatory framework, pending the development of consensus standards and incorporation of revised inspection requirements into 10 CFR 50.55a, directly or through reference to a future version of the ASME Code. In order to provide reasonable assurance of adequate protection of public health and safety for the interim period, all PWR Licenses identified in the Attachment to this Order shall be modified to include the inspection requirements for RPV heads and associated penetration nozzles identified in Section IV of this Order. The NRC requirements imposed by this Order are based on the body of evidence available through February 2003. Continuing research and operating experience may support future changes to the requirements imposed through this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 104b, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered,* effective immediately, *that* all licenses identified in the attachment to this order are modified as follows:

A. To determine the required inspection(s) for each refueling outage at their facility, all Licensees shall calculate the susceptibility category of each reactor vessel head to PWSCC-related degradation, as represented by a value of EDY for the end of each operating cycle, using the following equation:

$$EDY = \sum_{j=1}^{n} \left\{ \Delta EFPY_j \exp\left[-\frac{Q_i}{R}\left(\frac{1}{T_{head,j}} - \frac{1}{T_{ref}} \right) \right] \right\}$$

Where:

EDY = total effective degradation years, normalized to a reference temperature of 600 °F

$\Delta EFPY_j$ = operating time in years at $T_{head,j}$

Q_i = activation energy for crack initiation (50 kcal/mole)

R = universal gas constant (1.103×10^{-3} kcal/mole°R)

$T_{head,j}$ = 100% power head temperature during time period *j* (°R = °F + 459.67)

T_{ref} = reference temperature (600 °F = 1059.67 °R)

n = number of different head temperatures during plant history

This calculation shall be performed with best estimate values for each parameter at the end of each operating cycle for the RPV head that will be in service during the subsequent operating cycle. The calculated value of EDY shall determine the susceptibility category and the appropriate inspection for the RPV head during each refueling outage.

B. All Licensees shall use the following criteria to assign the RPV head at their facility to the appropriate PWSCC susceptibility category:

High—(1) Plants with a calculated value of EDY greater than 12, OR (2) Plants with an RPV head that has experienced cracking in a penetration nozzle or J-groove weld due to PWSCC.

Moderate—Plants with a calculated value of EDY less than or equal to 12 and greater than or equal to 8 AND no previous inspection findings requiring classification as High.

Low—Plants with a calculated value of EDY less than 8 AND no previous inspection findings requiring classification as High.

C. All Licensees shall perform inspections of the RPV head [1] using the following techniques and frequencies.[2]

(1) For those plants in the High category, RPV head and head penetration nozzle inspections shall be performed using the following techniques every refueling outage.[3]

(a) Bare metal visual examination of 100% of the RPV head surface (including 360° around each RPV head penetration nozzle), AND

(b) Either:

(i) Ultrasonic testing of each RPV head penetration nozzle (*i.e.*, nozzle base material) from two (2) inches above the J-groove weld to the bottom of the nozzle and an assessment to determine if leakage has occurred into the interference fit zone, OR

(ii) Eddy current testing or dye penetrant testing of the wetted surface of each J-Groove weld and RPV head penetration nozzle base material to at least two (2) inches above the J-groove weld.

(2) For those plants in the Moderate category, RPV head and head penetration inspections shall be performed such that at least the requirements of 2(a) or 2(b) are performed each refueling outage. In addition the requirements of 2(a) and 2(b) shall each be performed at least once over the course of every two (2) refueling outages.

(a) Bare metal visual examination of 100% of the RPV head surface (including 360° around each RPV head penetration nozzle).

(b) Either:

(i) Ultrasonic testing of each RPV head penetration nozzle (*i.e.*, nozzle base material) from two (2) inches above the J-groove weld to the bottom of the nozzle and an assessment to determine if leakage has occurred into the interference fit zone, OR

(ii) Eddy current testing or dye penetrant testing of the wetted surface of each J-Groove weld and RPV head penetration nozzle base material to at least two (2) inches above the J-groove weld.

(3) For those plants in the Low category, RPV head and head penetration nozzle inspections shall be performed as follows. An inspection meeting the requirements of 3(a) must be completed at least every third refueling outage or every five (5) years, whichever occurs first. If an inspection meeting the requirements of 3(a) was not performed during the refueling outage immediately preceding the issuance of this Order, the Licensee must complete an inspection meeting the requirements of 3(a) within the first two (2) refueling outages following issuance of this Order. The requirements of 3(b) must be completed at least once over the course of five (5) years after the issuance of this Order and thereafter at least every four (4) refueling outages or every seven (7) years, whichever occurs first.

(a) Bare metal visual examination of 100% of the RPV head surface (including 360° around each RPV head penetration nozzle).

(b) Either:

(i) Ultrasonic testing of each RPV head penetration nozzle (*i.e.*, nozzle base material) from two (2) inches above the J-groove weld to the bottom of the nozzle and an assessment to determine if leakage has occurred into the interference fit zone, or

(ii) Eddy current testing or dye penetrant testing of the wetted surface of each J-Groove weld and RPV head penetration nozzle base material to at least two (2) inches above the J-groove weld.

D. During each refueling outage, visual inspections shall be performed to identify potential boric acid leaks from pressure-retaining components above the RPV head. For any plant with boron deposits on the surface of the RPV head or related insulation, discovered either during the inspections required by this Order or otherwise and regardless of the source of the deposit, before returning the plant to operation the Licensee shall perform inspections of the affected RPV head surface and penetrations appropriate to the conditions found to verify the integrity of the affected area and penetrations.

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[1] This Order imposes additional inspection requirements. Licensees are required to address any findings from these inspections (*i.e.*, perform analyses and repairs) in accordance with existing requirements in the ASME Code and 10 CFR 50.55a. The NRC has issued guidance to address flaw evaluations for RPV head penetration nozzles (see letter dated November 21, 2001, from J. Strosnider, NRC, to A. Marion, Nuclear Energy Institute) and will, as necessary, issue revised guidance pending the updating of the ASME Code and related NRC regulations.

[2] The requirements of this Order are generally consistent with inspection plans that the NRC staff accepted in letters to some Licensees regarding their responses to Bulletin 2002–02. If the NRC staff has already accepted a specific variation from the requirements of this Order (*e.g.*, inspections to less than two (2) inches above the J-groove weld), the Licensee may continue with the previously accepted inspection plan for the next refueling outage after issuance of this Order, provided that in its response to this Order the Licensee identifies all discrepancies between the requirements of this Order and the previously accepted inspection plan. Licensees proposing to deviate from the requirements of this Order for subsequent refueling outages shall seek relaxation of this Order pursuant to the procedure specified at the end of this Section.

[3] For repaired RPV head penetration nozzles that establish a new pressure boundary, the ultrasonic testing inspection shall include the weld and at least one (1) inch above the weld in the nozzle base material. For RPV head penetration nozzles or J-groove welds repaired using a weld overlay, the overlay shall be examined by either ultrasonic, eddy current, or dye penetrant testing in addition to the examinations required by (1)(b)(i) or (1)(b)(ii).

E. For each inspection required in Paragraph C, the Licensee shall submit a report detailing the inspection results within sixty (60) days after returning the plant to operation.[4] For each inspection required in Paragraph D, the Licensee shall submit a report detailing the inspection results within sixty (60) days after returning the plant to operation if a leak or boron deposit was found during the inspection.

F. In the response required by Section V of this Order, all Licensees shall notify the Commission if: (1) They are unable to comply with any of the requirements of Section IV, or (2) compliance with any of the requirements of Section IV is unnecessary. Licensees proposing to deviate from the requirements of this Order shall seek relaxation of this Order pursuant to the procedure specified below.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause. A request for relaxation regarding inspection of specific nozzles shall also address the following criteria:

(1) The proposed alternative(s) for inspection of specific nozzles will provide an acceptable level of quality and safety, or

(2) Compliance with this Order for specific nozzles would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

Requests for relaxation associated with specific penetration nozzles will be evaluated by the NRC staff using its procedure for evaluating proposed alternatives to the ASME Code in accordance with 10 CFR 50.55a(a)(3).

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific plant; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Assistant General Counsel for Materials Litigation and Enforcement either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[5]

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or request for hearing shall not stay the immediate effectiveness of this order.

Dated this 11th day of February, 2003.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Attachment to Order:

Facilities

Beaver Valley Power Station, Units 1 and 2
Docket Nos. 50–334 and 50–412
License Nos. DPR–66 and NPF–73

Calvert Cliffs Nuclear Power Plant, Units 1 and 2
Docket Nos. 50–317 and 50–318
License Nos. DPR–53 and DPR–69

R.E. Ginna Nuclear Power Plant
Docket No. 50–244
License No. DPR–18

Indian Point Nuclear Generating Station, Units 2 and 3
Docket Nos. 50–247 and 50–286
License Nos. DPR–26 and DPR–64

Millstone Power Station, Units 2 and 3
Docket Nos. 50–336 and 50–423
License Nos. DPR–65 and NPF–49

Salem Nuclear Generating Station, Units 1 and 2
Docket Nos. 50–272 and 50–311
License Nos. DPR–70 and DPR–75

Seabrook Station, Unit 1
Docket No. 50–443
License No. NPF–86

Three Mile Island Nuclear Station, Unit 1
Docket No. 50–289
License No. DPR–50

Catawba Nuclear Station, Units 1 and 2
Docket Nos. 50–413 and 50–414
License Nos. NPF–35 and NPF–52

Crystal River Nuclear Power Plant
Docket No. 50–302
License No. DPR–72

Joseph M. Farley Nuclear Plant, Units 1 and 2
Docket Nos. 50–348 and 50–364
License Nos. NPF–2 and NPF–8

Shearon Harris Nuclear Power Plant, Unit 1
Docket No. 50–400
License No. NPF–63

William B. McGuire Nuclear Station, Units 1 and 2
Docket Nos. 50–369 and 50–370
License Nos. NPF–9 and NPF–17

North Anna Power Station, Units 1 and 2
Docket Nos. 50–338 and 50–339
License Nos. NPF–4 and NPF–7

[4] This reporting requirement supercedes the 30-day reports requested by NRC Bulletin 2002–02.

[5] The version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please *see* 67 FR 20884, April 29, 2002.

Surry Power Station, Units 1 and 2
Docket Nos. 50–280 and 50–281
License Nos. DPR–32 and DPR–37

Oconee Nuclear Station, Units 1, 2 and 3
Docket Nos. 50–269, 50–270 and 50–287
License Nos. DPR–38, DPR–47 and DPR–55

H.B. Robinson Steam Electric Plant, Unit 2
Docket No. 50–261
License No. DPR–23

St. Lucie Nuclear Plant, Units 1 and 2
Docket Nos. 50–335 and 50–389
License Nos. DPR–67 and NPF–16

Turkey Point Nuclear Generating Station, Units 3 and 4
Docket Nos. 50–250 and 50–251
License Nos. DPR–31 and DPR–41

Sequoyah Nuclear Plant, Units 1 and 2
Docket Nos. 50–327 and 50–328
License Nos. DPR–77 and DPR–79

Watts Bar Nuclear Plant, Unit 1
Docket No. 50–390
License No. NPF–90

Virgil C. Summer Nuclear Station, Unit 1
Docket No. 50–395
License No. NPF–12

Vogtle Electric Generating Plant, Units 1 and 2
Docket Nos. 50–424 and 50–425
License Nos. NPF–68 and NPF–81

Braidwood Station, Units 1 and 2
Docket Nos. STN 50–456 and STN 50–457
License Nos. NPF–72 and NPF–77

Byron Station, Units 1 and 2
Docket Nos. STN 50–454 and STN 50–455
License Nos. NPF–37 and NPF–66

Donald C. Cook Nuclear Plant, Units 1 and 2
Docket Nos. 50–315 and 50–316
License Nos. DPR–58 and DPR–74

Davis-Besse Nuclear Power Station, Unit 1
Docket No. 50–346
License No. NPF–3

Kewaunee Nuclear Power Plant
Docket No. 50–305
License No. DPR–43

Palisades Plant
Docket No. 50–255
License No. DPR–20

Point Beach Nuclear Plant, Units 1 and 2
Docket Nos. 50–266 and 50–301
License Nos. DPR–24 and DPR–27

Prairie Island Nuclear Generating Plant, Units 1 and 2
Docket Nos. 50–282 and 50–306
License Nos. DPR–42 and DPR–60

Arkansas Nuclear One, Units 1 and 2
Docket Nos. 50–313 and 50–368
License Nos. DPR–51 and NPF–6

Callaway Plant, Unit 1
Docket No. 50–483
License No. NPF–30

Comanche Peak Steam Electric Station, Units 1 and 2
Docket Nos. 50–445 and 50–446
License Nos. NPF–87 and NPF–89

Diablo Canyon Nuclear Power Plant, Units 1 and 2
Docket Nos. 50–275 and 50–323
License Nos. DPR–80 and DPR–82

Fort Calhoun Station, Unit 1
Docket No. 50–285
License No. DPR–40

Palo Verde Nuclear Generating Station, Units 1, 2 and 3
Docket Nos. STN 50–528, STN 50–529 and STN 50–530
License Nos. NPF–41, NPF–51 and NPF–74

San Onofre Nuclear Station, Units 2 and 3
Docket Nos. 50–361 and 50–362
License Nos. NPF–10 and NPF–15

South Texas Project Electric Generating Station, Units 1 and 2
Docket Nos. 50–498 and 50–499
License Nos. NPF–76 and NPF–80

Waterford Steam Electric Generating Station, Unit 3
Docket No. 50–382
License No. NPF–38

Wolf Creek Generating Station, Unit 1
Docket No. 50–482
License No. NPF–42

[FR Doc. 03–3835 Filed 2–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of February 17, 24, March 3, 10, 17, 24, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 17, 2003

There are no meetings scheduled for the Week of February 17, 2003.

Week of February 24, 2003—Tentative

There are no meetings scheduled for the Week of February 24, 2003.

Week of March 3, 2003—Tentative

Monday, March 3, 2003

10 a.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs—Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m.—Discussion of Security Issues (Closed—Ex. 1)

Week of March 10, 2003—Tentative

There are no meetings scheduled for the Week of March 10, 2003.

Week of March 17, 2003—Tentative

Thursday, March 20, 2003

10 a.m.—Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1)

2 p.m.—Discussion of Management Issues (Closed—Ex. 2)

Week of March 24, 2003—Tentative

Thursday, March 27, 2003

2 p.m.—Briefing on Status of Office of Research (RES) Programs, Performance, and Plans (Public Meeting)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information: ''Meeting with National Association of Regulatory Utility Commissioners (NARUC),'' originally scheduled for February 24, 2003, has been canceled.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 12, 2003.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 03–3934 Filed 2–13–03; 11:19 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and

make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, January 24, 2003, through February 6, 2003. The last biweekly notice was published on February 4, 2003 (68 FR 5668).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 20, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

[1] The most recent version of title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please *see* 67 FR 20884; April 29, 2002.

present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: December 13, 2002.

Description of amendments request: The proposed amendments would revise Technical Specification 3.5.2, Emergency Core Cooling System—Operating, by removing the Note that modifies the Limiting Condition for Operation. The proposed change would remove the requirement to have the charging pumps operable when thermal power is greater than 80% of rated thermal power (RTP). The proposed change would also remove Surveillance Requirement 3.5.2.4 for verifying the required charging pump flow rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The charging pumps were credited in the previous analysis to mitigate the consequences of a small-break loss-of-coolant accident (LOCA) above 80% of rated thermal power (RTP). The charging pumps were not considered to be an initiator of the accident. The new analysis for the small-break LOCA does not assume the charging pumps are initiators of the accident. Therefore, removing the requirement to maintain the charging pumps operable above 80% RTP and removing Surveillance Requirement 3.5.2.4 from the Technical Specification does not involve a significant increase in the probability of an accident previously evaluated.

The consequence of a small-break LOCA is the potential for inadequate core cooling and decreased negative reactivity such that the reactor core is not protected after the design basis event. The previous analysis for the small-break LOCA above 80% RTP assumed unborated flow from a single charging pump to ensure there was adequate cooling flow delivered to the Reactor Coolant System. The revised small-break LOCA analysis was performed such that flow from the charging pumps was not credited. Since the charging pump flow is no longer credited in the small-break LOCA analysis, the proposed changes do not involve a significant increase in the consequences of a small-break LOCA.

Therefore, the proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

This request[ed] change does not involve a change in the operation of the plant and no new accident initiation mechanism is created by the proposed changes. Since the charging pump flow is no longer credited in the small-break LOCA analysis, the requirement to have the charging pumps operable above 80% RTP and the charging pump Surveillance Requirement 3.5.2.4 can be removed from the Technical Specification. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the Emergency Core Cooling System is to provide core cooling and negative reactivity, to ensure that the reactor core is protected after design basis events. For a small-break LOCA, the previous analysis credited flow from the charging pumps above 80% RTP to supply supplemental cooling flow to the Reactor Coolant System. Credit for flow from a single charging pump was only taken for the water inventory.

The revised small-break LOCA analysis was performed using the newest Nuclear Regulatory Commission accepted versions of the Westinghouse evaluation models for Combustion Engineering designed pressurized water reactors. The revised small-break LOCA analysis incorporated several changes to plant parameters used in the analysis, one of which was the elimination of the need to credit the charging pump flow above 80% RTP. Since the charging pump flow is no longer credited in the small-break LOCA analysis, the requirement to have the charging pumps operable above 80% RTP and charging pump Surveillance Requirement 3.5.2.4 can be removed from the Technical Specification.

The proposed change to Technical Specification 3.5.2 does not modify any other charging pump requirements specified in the Technical Requirements Manual (*e.g.*, requirements on charging pump availability for boration and cooldown remain in effect).

Therefore, the safety function of the Emergency Core Cooling System is maintained and the margin of safety is not significantly reduced by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 12, 2002.

Description of amendments request: The proposed amendments would revise the Technical Specifications, as necessary, to support an expansion of the core flow operating range (*i.e.*, Maximum Extended Load Line Limit Analysis Plus (MELLLA+)). As part of the MELLLA+ implementation, Carolina Power & Light Company would implement the Detect and Suppress Solution-Confirmation Density (DSS–CD) approach to automatically detect and suppress neutronic/thermal-hydraulic instabilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

10 CFR 50.91(a) states ''At the time a licensee requests an amendment, it must provide to the Commission its analysis about the issue of no significant hazards consideration using the standards in § 50.92.'' The following provides this analysis for the MELLLA+ operating range to a minimum core flow rate of 85% of rated with 120% of the original licensed thermal power.

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The expansion of the core operating range discussed herein will not significantly increase the probability or consequences of an accident previously evaluated.

The probability (frequency of occurrence) of a DBA [design-basis accident] occurring is not affected by the operating range expansion, because the plant continues to comply with the regulatory and design basis criteria established for plant equipment (ASME [American Society of Mechanical Engineers] code, IEEE [Institute of Electrical and Electronics Engineers] standards, NEMA [National Electrical Manufacturers Association] standards, Regulatory Guides, etc.). An evaluation of the probabilistic safety assessments concludes that the calculated core damage frequencies do not significantly change due to the MELLLA+ operating range expansion. Scram setpoints (equipment settings that initiate automatic plant shutdowns) are established such that there is no significant increase in scram frequency due to the MELLLA+ operating range expansion. No new challenge to safety related equipment results from the MELLLA+ operating range expansion. The changes in consequences of hypothetical accidents, which occur from operation in the MELLLA+ region, are in all cases insignificant. The MELLLA+ accident evaluations do not exceed any NRC-approved acceptance limits. The spectrum of hypothetical accidents and abnormal operational occurrences has been investigated, and will meet the plant's currently licensed regulatory criteria. In the area of core design, for example, the fuel operating limits such as Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Safety Limit Minimum Critical Power Ratio (SLMCPR) are met, and fuel reload analyses will show plant transients meet the criteria accepted by the NRC as specified in [GE Nuclear Energy, ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A and NEDE–24011–P–A–US, (latest approved revision)]. Challenges to fuel (ECCS [emergency core cooling system] performance) are evaluated, and shown to still meet the criteria of 10 CFR 50.46, Appendix K, Regulatory Guide 1.70, and UFSAR [Updated Final Safety Analysis Report] Section 6.3. Challenges to the containment have been evaluated, and the containment and its associated cooling systems meet 10 CFR 50 Appendix A Criterion 38, Long Term Cooling, and Criterion 50, Containment. Radiological release events (accidents) have been evaluated, and shown to meet the regulatory limits of 10 CFR 50.67.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The MELLLA+ operating range expansion will not create the possibility of a new or different kind of accident from any accident previously evaluated. Equipment that could be affected by MELLLA+ has been evaluated and no new operating mode, safety related equipment lineup, accident scenario, or equipment failure mode was identified. The full spectrum of accident considerations, defined in the UFSAR, has been evaluated, and no new or different kind of accident has been identified. The MELLLA+ operating range expansion uses fully developed technology, and applies it within the capabilities of existing plant equipment. The technology includes NRC approved codes, standards and methods applied in accordance with existing regulatory criteria.

3. Will the change involve a significant reduction in a margin of safety?

The MELLLA+ operating range expansion will not involve a significant reduction in a margin of safety. The calculated loads on all affected structures, systems and components have been shown to remain within design allowables for all design basis event categories. No NRC acceptance criterion is exceeded. The margins of safety currently included in the design of the plant are not affected by the MELLLA+ operating range expansion. Because the plant configuration and response to transients and hypothetical accidents do not result in exceeding the presently approved NRC acceptance limits, operation in the MELLLA+ region does not involve a significant reduction in a margin of safety.

Conclusion: A MELLLA+ operating range expansion to a minimum core flow rate of 85% of rated with 120% of original licensed thermal power has been investigated. The BSEP [Brunswick Steam Electric Plant] licensing requirements have been evaluated and it has been demonstrated that this MELLLA+ operating range expansion can be accommodated:

- Without a significant increase in the probability or consequences of an accident previously evaluated,
- Without creating the possibility of a new or different kind of accident from any accident previously evaluated, and
- Without exceeding any presently existing regulatory limits or acceptance criteria applicable to the plant, which might cause a reduction in a margin of safety.

Having made negative declarations regarding the 10 CFR 50.92 criteria, this assessment concludes that an operating range expansion to a minimum core flow rate of 85% of rated with 120% of original licensed thermal power does not involve a Significant Hazards Consideration.

10 CFR 50.91(a) states ''At the time a licensee requests an amendment, it must provide to the Commission its analysis about the issue of no significant hazards consideration using the standards in § 50.92.'' The following provides this analysis for the DSS–CD long-term stability solution.

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will implement DSS–CD as the long-term stability solution. The DSS–CD solution is designed to identify the power oscillation upon inception and initiate control rod insertion to terminate the oscillations prior to any significant amplitude growth. The DSS–CD provides protection against violation of the Safety Limit Minimum Critical Power Ratio (SLMCPR) for anticipated oscillations. Compliance with General Design Criteria (GDC) 10 and 12 of 10 CFR part 50, Appendix A is accomplished via an automatic action. The DSS–CD introduces an enhanced detection algorithm that detects the inception of power oscillations and generates an earlier power suppression trip signal exclusively based on successive period confirmation recognition. The existing Option III algorithms are retained (with generic setpoints) to provide defense-in-depth protection for unanticipated reactor instability events.

A developing instability event is suppressed by the DSS–CD system with substantial margin to the SLMCPR and no clad damage, with the event terminating in a scram and never developing into an accident. In addition, the DSS–CD solution defense-in-depth features incorporate all the

backup scram algorithms plus the licensed scram feature of the existing Option III system. The DSS–CD system does not interact with equipment whose failure could cause an accident. Scram setpoints in the DSS–CD will be established so that analytical limits are met. The reliability of the DSS–CD will meet or exceed that of the existing system. No new challenges to safety-related equipment will result from the DSS–CD solution. Because an instability event would reliably terminate in an early scram without impact on other safety systems, there is no significant increase in the probability of an accident.

Proper operation of the DSS–CD system does not affect any fission product barrier or Engineered Safety Feature. Thus, the proposed change cannot change the consequences of any accident previously evaluated. As stated above, the DSS–CD solution meets the requirements of GDC 10 and 12 by automatically detecting and suppressing design basis thermal-hydraulic oscillations prior to exceeding the fuel SLMCPR.

Based on the above, the operation of the DSS–CD solution within the framework of the Option III OPRM hardware will not increase the probability or consequences of an accident previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The DSS–CD solution operates within the existing Option III OPRM [Oscillation Power Range Monitor] hardware. No new operating mode, safety-related equipment lineup, accident scenario, system interaction, or equipment failure mode was identified. Therefore, the DSS–CD solution will not adversely affect plant equipment.

Because there are no hardware design changes * * *, there is no change in the possibility or consequences of a failure. The worst case failure of the equipment is a failure to initiate mitigating action (*i.e.*, scram), but no failure can cause an accident of a new or different kind than any previously evaluated.

Based on the above, the proposed change to the DSS–CD solution will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

The DSS–CD solution is designed to identify the power oscillation upon inception and initiate control rod insertion to terminate the oscillations prior to any significant amplitude growth. The DSS–CD solution algorithm will maintain or increase the margin to the SLMCPR for anticipated instability events. The safety analyses in NEDC–33075P * * * demonstrate the margin to the SLMCPR for postulated bounding stability events. As a result, there is no impact on the MCPR [minimum critical power ratio] Safety Limit identified for an instability event.

The current Option III algorithms (Period Based Detection, Amplitude Based, and Growth Rate) are retained (with generic setpoints) to provide defense-in-depth protection for unanticipated reactor instability events.

Based on the above, the proposed change will not involve a significant reduction in the margin of safety.

Conclusions: The DSS–CD stability solution has been investigated. The BSEP licensing requirements have been evaluated and it has been demonstrated that the DSS–CD stability solution can be accommodated:

- Without a significant increase in the probability or consequences of an accident previously evaluated,
- Without creating the possibility of a new or different kind of accident from any accident previously evaluated, and
- Without exceeding any presently existing regulatory limits or acceptance criteria applicable to the plant, which might cause a reduction in a margin of safety.

Having made negative declarations regarding the 10 CFR 50.92 criteria, this assessment concludes that the DSS–CD stability solution does not involve a Significant Hazards Consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602. *NRC Section Chief:* Allen G. Howe.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 7, 2002, supplemented by letter dated January 8, 2003.

Description of amendment request: The proposed amendments would revise the Updated Final Safety Analysis Report to eliminate credit for the flow path from the spent fuel pool to the high pressure injection pump as one source of primary system makeup following a tornado. The proposed amendments would also credit the Standby Shutdown Facility as the assured means of achieving safe shutdown for all three Oconee units following a tornado. By letter dated January 8, 2003, Duke Energy Corporation provided a revised No Significant Hazards Consideration (NSHC) that supercedes the NSHC that was noticed in the **Federal Register** on July 23, 2002 (67 FR 48216).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Energy Corporation (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being requested in this amendment request involve (1) the elimination of the Spent Fuel Pool [SFP] as a suction source to a High Pressure Injection [HPI] pump for primary system make-up, and (2) to fully credit the Standby Shutdown Facility (SSF) as the primary assured means of achieving safe shutdown of all three units following a tornado. Following the modification to fully tornado protect the SSF, this facility becomes the station's assured flow path for both primary make-up and secondary decay heat removal for all three units.

Although the probability of a severe tornado strike at the station does not change, new tornado insights gained from a review of the current external event risk analysis have resulted in an enhanced risk model that more accurately characterizes station tornado damage risk. The proposed changes are part of the revised tornado mitigation strategy that provides for an assured, deterministic success path rather than the current strategy that is based on risk insights and diversity for achieving safe shutdown. This effort has resulted in an overall reduction in tornado risk at the station and consequently, would not result in a significant increase in the consequences of an accident previously evaluated.

Other than the fortification of walls of existing structures to harden them against tornado damage, there are no physical changes to the plant structures, systems, or components (SSCs), nor are there any changes to safety limits or set points. Also, no new radiological release pathways are created.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed in this amendment request do not create the possibility of a new or different kind of accident from any accident previously evaluated. The initial placement of the SFP–HPI flow path into the LB [licensing basis] was based on 1989 risk analyses that showed a potential need for primary make-up due to inventory losses from a reactor coolant pump (RCP) seal loss-of-cooling accident (LOCA). The upgrade of the RCP seals has significantly reduced the probability of a seal LOCA and subsequently, alleviated the initial reliance on the SFP–HPI flow path for primary make-up. If multi-unit primary make-up and decay heat removal are required following an event, the tornado protected SSF RBMU [sic] [(RCMU) reactor coolant makeup] or SSF ASW [auxiliary service water] pumps have the capabilities to perform these functions for all three units.

3. Involve a significant reduction in a margin of safety.

As mentioned previously, new tornado insights gained from a review of the current external event risk analysis have resulted in an enhanced risk model that more accurately characterizes station tornado damage risk. The proposed changes are part of the revised tornado mitigation strategy that provides for an assured, deterministic success path rather than a strategy that is based on risk insights and diversity for achieving safe shutdown.

There is no safety limit, set point, or design parameter changes required. The integrity of the fuel cladding, reactor coolant system, and containment are preserved. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: December 30, 2002.

Description of amendment request: The proposed amendment revises two technical specifications (TSs). The first change proposes to revise TS 2.1.1.2, ''Minimum Critical Power Ratio Safety Limit (MCPRSL)'' to support operation during Cycle 17 with a mixed core. The second change proposes to revise the local power range monitor (LPRM) calibration frequency specified in the TS for the oscillation power range monitor (OPRM) in Surveillance Requirement (SR) 3.3.1.3.2. This change will correct an inconsistency between the LPRM calibration frequency specified in SR 3.3.1.3.2 and SR 3.3.1.1.7, ''Reactor Protection System (RPS) Instrumentation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The licensee addresses each change separately.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

1. The requested change to TS 2.1.1.2, MCPRSL to support the cycle 17 core loading does not involve any plant modifications or operational changes that could affect system reliability, performance, or possibility of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigation systems, and do not introduce any new accident initiation mechanisms. The consequences of accidents previously evaluated are not changed because the number of rods that are protected from transition boiling is predicted to be greater than 99.9 percent which meets the acceptance criterion in NUREG–0800, Section 4.4.

2. The requested change to SR 3.3.1.3.2, OPRM/LPRM calibration frequency, does not involve a modification to the plant or introduce the probability of an operator error. The LPRMs are not the precursor to any accident. Making the LPRM surveillance frequency for the OPRM consistent with that approved for the RPS/APRM [reactor protection system/average power range monitor] does not change system reliability. The proposed LPRM surveillance frequency is supported by the uncertainties used to perform the MCPRSL analyses. Therefore, the number of rods that are calculated to experience transition boiling during normal operation or anticipated operational occurrences will not be changed and the consequences of these events will not be increased.

Therefore, these changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

1. The ATRIUM–10 fuel to be used in cycle 17 is compatible with the co-resident SVEA–96 fuel. This compatibility is demonstrated by application of the FRA–ANP critical power methodology to the core design that includes the ATRIUM–10 and SVEA–96 fuel. The proposed changes do not represent any new modes of operation, changes in setpoints or plant modifications other than those required for the reactor core. The change does not introduce new postulated accident precursors or mitigation systems. Reload design and analysis will be performed in accordance with approved NRC methodology.

2. Increasing the time interval for the OPRM/LPRM surveillance reduces the frequency to be consistent with the LPRM surveillance frequency for the RPS/APRM and does not involve a modification to the plant, introduce a new operator error or revise setpoints.

Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

1. The proposed MCPRSL does not involve a significant reduction in the margin of safety associated with the criterion set forth in NUREG–0800, section 4.4. The safety limit established for the core ensures that the criterion for the number of fuel rods allowed to experience transition boiling will be maintained for normal plant operation and anticipated operational transients.

The core operating limits will continue to be determined using methodologies that have been approved by the NRC.

2. The proposed LPRM surveillance frequency is supported by the uncertainties used to perform the MCPRSL analyses. Therefore, the number of rods that are calculated to experience transition boiling during normal operation or anticipated operational occurrences will not be changed.

Therefore, implementation of the change to the MCPRSL and the LPRM surveillance frequency does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 10, 2002, as supplemented on November 22, 2002, and January 28, 2003. This notice supercedes 67 FR 68735 published on November 12, 2002, which erroneously stated that the October 10, 2002, application was a supplement of the licensee's application dated December 12, 2001. The October 10, 2002, replaced the December 12, 2001, application. This notice also adds supplements dated November 22, 2002, and January 28, 2003.

Description of amendment request: The proposed amendment would change the Technical Specification Tables 3.2.A, 3.2.B, 4.2.A, and 4.2.B. The proposed changes affect various instrument trip level settings and decreases the calibration frequencies for a variety of instruments. The proposed changes also involve clarifications to the Reactor Water Cleanup system trip configuration and the titles of certain trip systems. In addition, the proposed changes would make certain editorial and administrative corrections. The proposed setpoint changes and calibration frequencies are based on the licensee's evaluation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The methodology used to determine the proposed trip level settings and surveillance intervals ensure adequate performance of the affected instrumentation. In addition, the affected instruments are not initiators of any accident previously evaluated. Therefore, the proposed trip level setting and surveillance intervals will not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes to trip level settings and surveillance intervals were establish using methodologies subject to 10 CFR Appendix B Quality Assurance program and ensure existing radiological limits are met. Therefore, the proposed trip level settings and surveillance intervals will not involve a significant increase in the consequences of an accident previously evaluated.

Other changes are editorial or administrative in nature and can not significantly increase the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different [kind] of accidents or malfunctions than those previously analyzed in Pilgrim's UFSAR [Updated Final Safety Analysis Report] are introduced by this proposed change because there are no new failure modes introduced. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in the margin of safety.

The proposed changes to trip level settings and surveillance intervals were established using approved methodologies subject to a 10 CFR, Appendix B, Quality Assurance program and existing radiological limits are met. These changes do not impact Pilgrim's configuration or operation.

Editorial and administrative type changes do not impact the operation or configuration of Pilgrim. For the above reasons the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Clifford.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 4, 2002. This notice supercedes 68 FR 2801 published on January 21, 2003, which erroneously stated that the December 4, 2002, application was a supplement of the licensee's application dated May 1, 2002. The December 4, 2002, application replaced the May 1, 2002, application in its entirety.

Description of amendment request: The proposed amendment would extend the applicability of the current Pilgrim Nuclear Power Station (Pilgrim) reactor pressure vessel pressure-temperature (P–T) curves through the end of Operating Cycle (OC) 16. The current P–T curves were approved for use in License Amendment 190, dated April 13, 2001, and are limited to use through the end of OC 14. The proposed change would delete the 20 and 32 Effective Full Power Year (EFPY) curves and replace the wording of the title blocks to allow use through the end of OC 16. The proposed amendment would change Pilgrim Technical Specification Figures 3.6.1, 3.6.2, and 3.6.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves a request to extend the use of the current reactor pressure vessel P–T curves for two additional OCs. The P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR part 50, Appendix G, and American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), section XI, Appendix G and Regulatory Guide 1.99, Revision 2, Radiation Embrittlement of Reactor Vessel Materials, and were established in compliance with the methodology used to calculate and predict effects of radiation on embrittlement of reactor pressure vessel beltline materials. There are no physical changes to the plant or new modes of operation being introduced by the proposed change. Further, the proposed change does not involve a change to any activities or equipment and is not assumed in the safety analysis to initiate any accident sequence. The proposed change does not adversely affect the integrity of the reactor coolant pressure boundary such that its function in the containment of radioactive materials is affected. Additionally, the proposed change will not create any failure mode not bounded by previously evaluated accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The current P–T curves were generated in accordance with the fracture toughness requirements of 10 CFR part 50, Appendix G, and ASME Code, section XI, Appendix G, and were approved by the U.S. Nuclear Regulatory Commission for use through OC 14. The proposed change would extend use of the P–T curves for two additional OCs. No new modes of operation are introduced by the proposed change. Plant operation in compliance with the current P–T curves ensures conditions in which brittle fracture of primary coolant pressure boundary materials is avoided. Accidents involving a breach of the primary coolant pressure boundary have previously been evaluated and no other types of accidents associated with the proposed change have been identified. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed curves were established in compliance with the methodology used to calculate and predict effects of radiation on embrittlement of reactor pressure vessel beltline materials and are estimated for 48 effective full-power years. The current curves are approved for use through the end of OC 14 (~19 EFPYs) which provides a conservatism factor of 1.7 between the actual EFPYs at the end of OC 14 and the end-of-life curve (32 EFPY). The change would extend the use of the proposed curves to the end of OC 16 (~23 EFPYs) which provides a conservatism factor of approximately 2.0. The actual EFPYs at the end of OC 16 is bounded by the 48 EFPYs estimated for the current curves. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: December 12, 2002.

Description of amendment request: The proposed amendment would add a new Surveillance Requirement (SR) to the technical specification (TS) section 3.7.5, ''Auxiliary Feedwater (AF) System,'' which requires operation of the diesel-driven AF pump on a monthly frequency (*i.e.*, once every 31 days) for greater than or equal to 15 minutes. The current TS SR 3.7.5.3 requires both the diesel-driven AF pump and the motor-driven AF pump to be operated once per quarter in accordance with the Inservice Testing Program; however, based on operating experience, Braidwood and Byron Stations conduct the diesel-driven AF pump surveillance on a monthly frequency to maintain a high level of assurance that the diesel engine would automatically start when called upon to perform its design basis function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change adds a new TS SR to the AF System TS section 3.7.5. The new SR requires that the diesel-driven AF pump be operated for greater than or equal to 15 minutes every month. Operating experience has shown that conducting the diesel-driven AF pump surveillance on a monthly frequency maintains a high level of assurance that the diesel engine will automatically start when called upon to perform its design basis function.

The previously analyzed events are initiated by the failure of plant structures, systems, or components. The AF system is not considered an initiator for any of these previously analyzed events. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The initial conditions of design basis accident and transient analyses in the Byron/Braidwood Stations Updated Final Safety Analysis Report assume the AF system is operable. The operability of the AF system is assured by the proposed TS SR and is consistent with the initial assumptions of the accident analyses. Since functionality of the diesel engine can be better assured when the diesel-driven AF pump is operated monthly vice quarterly, Exelon is proposing to add a TS SR to operate the diesel-driven AF pump on a monthly frequency. The proposed SR will provide higher confidence that the diesel-driven AF pump will reliably start automatically during an emergency condition, consistent with the AF System design requirements, and continue to mitigate the consequences of the associated design basis accidents. Based on this evaluation, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. The current diesel-driven AF pump surveillance procedure is already conducted on a monthly basis and has been reviewed, approved and judged appropriate to provide high confidence that the AF diesel engine and pump will reliably start and operate during an emergency condition. The new SR formalizes this monthly surveillance practice in the TS. Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change does not alter any existing setpoints at which protective actions are initiated and no new setpoints or protective actions are introduced. The design and operation of the AF system remains unchanged and maintains the existing margins of safety. Since the increased frequency of the diesel-driven AF pump surveillance test maintains high assurance that the pump's diesel engine will successfully auto-start during an emergency, the proposed additional SR will provide high confidence that the AF system will continue to function as designed. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Exelon concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 23, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) section 6, Administrative Controls, to: (1) relocate administrative requirements discussed in Administrative Letter 95–06 (AL 95–06), ''Relocation of Technical Specification Administrative Controls Related to Quality Assurance,'' to the Operational Quality Assurance Program, (2) change the title of the senior onsite official, and (3) bring the TSs into consistency with changes in 10 CFR part 20.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Seabrook Station TS do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient or accident conditions nor do they change any of the procedures related to operation of the plant. The proposed changes do not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative and editorial for the purpose of correcting or updating TS to reflect current NRC [Nuclear Regulatory Commission] and industry initiatives.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types

and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, it is concluded that these proposed revisions do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the Seabrook Station TS do not change the operation or the design basis of any plant system or component during normal or accident conditions. The proposed changes do not include any physical changes to the plant. In addition, the proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes.

The proposed changes are administrative in nature and only correct, update and clarify the Seabrook Station Technical Specifications to reflect NRC guidance, *i.e.*, AL 95–06. The proposed changes do not modify the facility nor do they affect the plant's response to normal, transient or accident conditions. The changes do not introduce a new mode of plant operation. The changes are an enhancement and do not affect plant safety. The plant's design and design basis are not revised and the current safety analyses remains in effect.

Thus, these proposed revisions to the Seabrook Station TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in [a] margin of safety.

The proposed changes are administrative changes to the Seabrook Station Technical Specifications. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design or its method of operation revised by the proposed changes. Thus, it is concluded that these proposed revisions to the Seabrook Station TS do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: James W. Clifford.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 17, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.9, ''Control Room Emergency Filtration System (CREFS),'' by deleting the one-time extension to the allowed outage time (AOT) for CREFS and the exception to the requirements of limiting condition for operation 3.0.4 and surveillance requirement 3.0.4 that were allowed during the AOT.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The operability of CREFS ensures that the control room will remain habitable for operators during and following all credible accident conditions. The inoperability or failure of CREFS is not an accident initiator or precursor. Therefore, the probability of an accident previously evaluated will not be significantly increased as a result of the proposed change. Because design limitations continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The evaluation of the effects of the proposed changes indicate that all design standards and applicable safety criteria limits are met. These changes therefore do not cause the initiation of any new or different accident nor create any new failure mechanisms.

Equipment important to safety will continue to operate as designed.

Additionally, the changes do not result in any event previously deemed incredible being made credible. The changes also do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other structures, systems or components (SSCs) important to safety. Therefore, deleting the one-time extension to the CREFS AOT will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 28, 2002, as supplemented on December 18, 2002, and January 18, 2003.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) by relaxing the secondary containment requirements and eliminating the Filtration, Ventilation, and Recirculation System (FRVS) charcoal filters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The definition of CORE ALTERATIONS has been revised to define that control rod movement, provided there are no fuel assemblies in the associated core cell, is not a core alteration. This is consistent with Standard Technical Specifications (STS) NUREG–1433 Vol.1, Rev. 2, Standard Technical Specifications, General Electric Plants, BWR/4 [Boiling Water Reactor, Type 4].

The TS presently provide a period of 7 days to restore an inoperable FRVS ventilation unit when performing activities with the potential for draining the reactor vessel or discontinue such activities.

Operation of the redundant train will ensure that the remaining subsystem is operable, that no failures, which could prevent automatic actuation, have occurred and that any other failures will be readily detected. This is consistent with STS, NUREG–1433 Vol.1, Rev. 2, Standard Technical Specifications, General Electric Plants, BWR/4.

The proposed changes associated with the FHA [fuel-handling accident] do not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated in the Hope Creek Updated Final Safety Analysis Report (UFSAR). The FHA for the HCGS [Hope Creek Generating Station] is defined as a drop of a fuel assembly over irradiated assemblies in the reactor core 24 hours after reactor shutdown. AST [accident source term] is used to evaluate the dose consequences of a postulated accident. The FHA has been analyzed without credit for Secondary Containment, Filtration Recirculation and Ventilation System (FRVS), and Control Room Emergency Filtration (CREF) system. The resultant radiological consequences are within the acceptance criteria set forth in 10 CFR 50.67 and Regulatory Guide 1.183. This amendment does not alter the methodology or equipment used directly in fuel handling operations. The equipment hatch, the personnel air locks, nor any other containment penetration, nor any component thereof is an accident initiator. Actual fuel handling operations are not affected by the proposed changes. Therefore, the probability of a Fuel Handling Accident is not affected with the proposed amendment. No other accident initiator is affected by the proposed changes.

The Loss of Coolant Accident (LOCA) Dose Calculation has been revised to (1) eliminate credit for the FRVS recirculation charcoal filters, (2) reduce credited efficiency of FRVS vent charcoal filters, (3) reduce Engineered Safety Feature (ESF) leakage from 10 gpm to 1 gpm and (4) reduce control room unfiltered in-leakage to 350 cfm [cubic feet per minute]. These proposed changes do not eliminate any safety system. The changes are only associated with the credit provided by the system in reducing the radiological consequences and therefore, do not affect any accident initiator. The results of that analysis show that the Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Control Room (CR) doses are of the same order of magnitude as the previous analysis and remain within the acceptance criteria in 10 CFR 50.67 and Regulatory Guide 1.183.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed amendment will not create the possibility for a new or different type of accident from any accident previously evaluated. Changes to the allowable activity in the primary and secondary systems do not result in changes to the design or operation of these systems. The evaluation of the effects of the proposed changes indicates that all design standard and applicable safety criteria limits are met.

Equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Does the change involve a significant reduction in [a] margin of safety?

Response: No.

The proposed changes revise the TS to establish operational conditions where specific activities represent situations during which significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or below the regulatory guidelines. Safety margins and analytical conservatisms are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed TS continue to ensure that the TEDE [total effective dose equivalent] for the CR, the EAB, and LPZ are below the corresponding acceptance criteria specified in 10 CFR 50.67 and RG1.183.

Therefore, these changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James Clifford.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 9, 2002, as supplemented November 22, 2002, and December 6, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 6.8.4.f, ''Primary Containment Leakage Rate Testing Program,'' to allow a one-time interval extension to the requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The proposed revision to section 6.8.4.f adds a one-time extension to the current interval for containment integrated leak rate test (ILRT). The current test interval of 10 years, based upon past performance, would be extended on a one-time basis to 15 years from the last ILRT. The proposed extension to ILRT testing cannot increase the probability of an accident previously evaluated since the containment ILRT testing extension is not a modification to plant systems, nor a change to plant operation that could initiate an accident. The proposed extension to Type A testing does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493, ''Performance-Based Containment Leak-Test Program,'' found that very few potential containment leakage paths fail to be identified by Type B and C tests. The NUREG concluded that reducing the ILRT testing frequency to once per twenty years would lead to an imperceptible increase in risk. Containment performance monitoring is performed in accordance with the Maintenance Rule (10 CFR 50.65) and inspections required by American Society of Mechanical Engineers (ASME) code are performed in order to identify indications of containment degradation that could affect leak tightness. Type B and C testing required by the technical specifications (TS) will identify any containment opening, such as valves, that would otherwise be detected by the ILRT. Reg. Guide 1.174 provides guidance for determining the risk impact of plant-specific changes to the licensing basis. It also recommends the use of risk analysis techniques to ensure and show that the proposed change is consistent with the defense-in-depth philosophy. The increase in large early release frequency (LERF) resulting from a change in the ILRT test frequency from the current once in every 10 years to once in every 15 years is less than 1E–7 per year, thereby meeting Regulatory Guide 1.174 definition of a very small change in risk. The change in conditional containment failure probability (CCFP) is estimated to be 0.25% for the proposed change. These factors show that an ILRT test extension will not represent a significant increase in the consequences of an accident.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

The proposed revision to section 6.8.4.f adds a one-time exception to the current interval for the ILRT. The current test interval of 10 years, based upon past performance, would be extended on a one-time basis to 15 years from the last Type A test. Primary containment is designed to contain energy and fission products during and after an event. The Individual Plant

Examination (IPE) identifies events that lead to containment failure. Revision to the ILRT test interval does not change this list of events. There are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating a new or different kind of accident.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the change involve a significant reduction in the margin of safety?

Response: No.

The proposed revision to section 6.8.4.f adds a one-time extension to the current interval for the ILRT. The current test interval of 10 years, based upon past performance, would be extended on a one-time basis to 15 years from the last ILRT. The proposed extension to ILRT testing interval will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year exception in ILRT leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that the containment leakage rate contributes a very small amount to the individual risk, and that the decrease in Type A testing frequency would have a minimal affect on this risk since most potential leakage paths are detected by Type C testing. Type B and Type C testing will continue to be performed at a frequency currently required by the Technical Specifications (TS). The containment inspections being performed in accordance with ASME, section XI, and Maintenance Rule (10 CFR 50.65) provide a high degree of assurance that the containment will not degrade in a manner that is only detectable by Type A testing.

Reg. Guide 1.174 provides guidance for determining the risk impact of plant-specific changes to the licensing basis. It also recommends the use of risk analysis techniques to ensure and show that the proposed change is consistent with the defense-in-depth philosophy. The increase in large early release fraction (LERF) resulting from a change in the ILRT test frequency from the current once in every 10 years to once in every 15 years is less than 1E–7 per year, thereby meeting Regulatory Guide 1.174 definition of a very small change in risk. The change in conditional containment failure probability (CCFP) is estimated to be 0.25% for the proposed change.

Therefore, these changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James Clifford.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 25, 2002, as supplemented on October 21, 2002.

Description of amendment request: The proposed change would revise Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Technical Specifications (TSs) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of up to 24 hours, to ''* * * up to 24 hours or up to the limit of the specified frequency, whichever is greater.'' In addition, the following requirement would be added to SR 4.0.3: ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed.'' PSEG is also proposing changes to adopt a TS Bases Control Program and changes to SR 4.0.1.

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination for amendments concerning missed surveillances in its original application dated July 25, 2002. The proposed amendment would also make administrative changes to SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2, ''Standard Technical Specifications, Westinghouse Plants.'' These changes are necessary to make the current Salem TSs compatible with the proposed CLIIP changes for missed surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

[Specification 4.0.3]

The proposed change relaxes the time allowed to perform a missed Surveillance. The time between Surveillances is not an initiator to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be OPERABLE and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected.

[Specification 4.0.1]

The proposed additional requirement equating failure to meet a surveillance with failure to meet the [limiting condition for operation] is consistent with current interpretation of the technical specifications. This change, along with relocation and rewording of existing requirements from Specification 4.0.3, are administrative in nature and do not adversely affect accident initiators, design functions, facility configuration or the manner of operation or control. The ability of structures, systems and components to perform their intended function remains unaffected.

[Bases Control Program]

The proposed change to adopt a Technical Specification Bases Control Program is also administrative in nature and does not adversely affect accident initiators, design functions, facility configuration or the manner of operation or control. The ability of structures, systems or components to perform their intended function remains unaffected. Future changes to the TS Bases will continue to be administratively controlled in accordance with the requirements of 10 CFR 50.59.

Therefore, these three changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

None of the three proposed changes involves a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

[Specification 4.0.3]

The [extended] time allowed to perform a missed Surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any Surveillance is verification that the LCO is met. Failure to perform a Surveillance within the prescribed Frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed Surveillance on the margin of safety is the

extension of the time until inoperable equipment is discovered to be inoperable by the missed Surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed Surveillance, a missed Surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed Surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested.

[Specification 4.0.1]

The proposed changes to TS 4.0.1, including relocation and rewording of existing requirements from Specification 4.0.3, are administrative in nature and do not reduce the level of programmatic or procedural controls associated with the Surveillance Requirements. There are no substantive differences in meaning or intent between the existing specifications and the corresponding STS requirements. Further, these changes have no impact on equipment design, configuration, analytical basis, setpoints or operation.

[Bases Control Program]

The proposed change to adopt a Technical Specification Bases Control Program is also administrative in nature and does not reduce the level of programmatic or procedural controls associated with the Bases. There is no impact on equipment design, configuration, analytical basis, setpoints or operation.

Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: December 19, 2002.

Description of amendment request: The proposed amendments would change the Operating Licenses and Technical Specifications associated with an increase in the licensed reactor power level of 1.5 percent for each reactor (from 2763 megawatts thermal (MWt) to 2804 MWt).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Southern Nuclear Company] SNC's conclusion that the proposed change to the Plant Hatch Unit 1 and 2 Operating Licenses and Technical Specifications does not involve a significant hazards consideration is based upon the following:

1. The proposed amendment does not change involve a significant increase in the probability or consequences of an accident previously evaluated[.]

The comprehensive analytical efforts performed to support the proposed uprate conditions included a review and evaluation of all components and systems that could be affected by this change. Performance requirements for these systems were evaluated and found acceptable. Furthermore, evaluation of accident analyses confirmed the effects of the proposed uprate are bounded by the current dose analyses. The systems will function as designed. The performance requirements for these systems were evaluated and found acceptable.

The primary loop components (*e.g.*, reactor vessel, reactor internals, control rod drive housings, piping and supports, and recirculation pumps) continue to comply with their applicable structural limits and will continue to perform their intended design functions. Thus, the probability of a structural failure of these components is not increased as a result of this change.

The Nuclear Steam Supply System (NSSS) systems will still perform their intended design functions during normal and accident conditions. The balance-of-plant (BOP) systems and components will continue to meet their applicable structural limits and perform their intended design functions. Thus, the probability of a structural failure of these components is not increased as a result of this change.

The NSSS/BOP interface systems will continue to perform their intended design functions. The safety relief valves and containment isolation valves still meet design sizing requirements at the uprated power level.

Because the integrity of the plant will not be affected by operation at the uprated condition, SNC concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions. The reduced uncertainty in the flow input to the core thermal power uncertainty measurement allows most of the current safety analyses to be used, with small changes to the core operating limits, to support operation at a core power of 2804 MWt. Other analyses performed at a nominal power level were either evaluated or reperformed for the 1.5% increased power level. The results demonstrate that the applicable analysis acceptance criteria continue to be met at the 1.5% uprate conditions. Thus, all Plant Hatch Final Safety Analysis Report accident analyses continue to demonstrate compliance with the relevant event acceptance criteria. The analyses performed to assess the effects of mass and energy release remain valid. The source terms used to assess radiological consequences were reviewed and determined to bound operation at the 1.5% uprated condition. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not change create the possibility of a new or different kind of accident from any previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed change will have no adverse effect on any safety-related system or component and does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers confirm that all relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier and from the standpoint of compliance with the required acceptance criteria. As appropriate, all evaluations were performed using methods that were either reviewed and approved by the NRC, or are in compliance with regulatory review guidance and standards. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 14, 2002.

Description of amendment request: The proposed amendment would delete

the turbine missile design basis from the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The turbine missile generation probability will not be significantly increased by elimination of the regulatory commitments in the UFSAR. No plant changes are proposed that would significantly increase the probability of turbine missile generation. Turbine missile generation does not pose a credible threat to safety related components and consequently has no potential to increase radiological consequences.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involve no physical modification of the plant or different operating configurations.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Turbine missiles do not constitute a credible threat to nuclear safety at STP [South Texas Project]. They are not a consideration in any plant safety analysis. Changing the regulatory commitment with regard to design for turbine missiles has no effect on any margin of safety.

Based upon the analysis provided herein, the proposed amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: January 14, 2003 (TS 02–08).

Description of amendment request: The proposed amendment would revise applicability requirements for TS 3.3.9.4, ''Containment Building Penetrations.'' This revision will modify the current applicability requirement associated with movement of ''irradiated fuel'' by adding a new applicability statement for the containment building equipment door.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the applicability of the containment building penetration function and associated action. This change does not alter the function of the penetrations but does revise when the feature is required to be available for the mitigation of postulated accidents. These penetrations only function to minimize the release of radioactive material for accident mitigation and are not considered to be a source of any postulated accident. The analysis verifies that a fuel handling accident (FHA) occurring at least 100 hours after being critical in a reactor core will not result in dose consequences above the regulatory limits without the containment closure function provided by the CBED [containment building equipment door]. The applicability and action for the CBED will not be changed when movement of recently irradiated fuel is in progress and this function ensures acceptable dose consequences. Therefore, the proposed change will not increase the probability of an accident because the penetration function has not been altered and this function is not a potential source for accidents. Additionally, the proposed change will not significantly increase the consequences of an accident because the analysis has verified that dose consequences will be maintained less than the required regulatory limits.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change only modifies when containment building penetrations need to be available for accident mitigation and does not alter their function, design, or operation. These penetrations only serve to minimize the release of radioactive material in the event of postulated accidents and do not have the potential to create an accident. Since the function of the penetrations is not being changed and they do not have an accident generation potential, the possibility of a new or different kind of accident is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change will not alter the function, design, or operation of the containment building penetrations for postulated accidents that require this feature for the mitigation of the event. The analysis has determined that the CBED availability can be limited to those activities that involve the movement of irradiated fuel that has been in a critical reactor core within the previous 100 hours. Therefore, not requiring the CBED to be available 100 hours or longer afterwards will not impact plant safety or result in dose consequences above established regulatory limits. The proposed change will not alter any setpoints or other functions that serve to maintain the safety limits. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Yankee Atomic Electric Co., Docket No. 50–29, Yankee Nuclear Power Station (YNPS) Franklin County, Massachusetts

Date of amendment request: January 14, 2003.

Description of amendment request: The proposed amendment will revise the Yankee Rowe Nuclear Power Station License and Technical Specifications to delete operational and administrative requirements that would no longer be required once the spent nuclear fuel has been transferred from the spent fuel pool to the Independent Spent Fuel Storage Installation (ISFSI).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes reflect the complete transfer of all spent nuclear fuel from the Spent Fuel Pit to the Independent Spent Fuel Storage Installation (ISFSI). Design basis accidents related to the Spent Fuel Pit are discussed in the YNPS FSAR. These postulated accidents are predicated on spent nuclear fuel being stored in the Spent Fuel Pit. With the removal of the spent fuel from the Spent Fuel Pit, there are no remaining important to safety systems required to be monitored and there are no remaining credible accidents that require that actions of a Certified Fuel Handler or non-Certified Fuel Handler to prevent occurrence or mitigate the consequences.

The YNPS FSAR provides a discussion of radiological events postulated to occur as a result of decommissioning with the bounding consequence resulting from a materials handling event. The proposed changes do not have an adverse impact on decommissioning activities or any of their postulated consequences.

The proposed change to the Design Features section of the Technical Specifications clarifies that the spent fuel is being stored in dry casks within an ISFSI. The probability or consequences of accidents at the ISFSI are evaluated in the dry cask vendor's FSAR and are independent of the accidents evaluated in the YNPS FSAR.

Based on the above, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes reflect the reduced operational risks as a result of the spent nuclear fuel being transferred to dry casks within an ISFSI. The proposed changes do not modify any physical systems, or components. The plant conditions for which the YNPS FSAR design basis accidents relating to spent fuel have been evaluated are no longer applicable. The aforementioned proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of an accident. Design basis accidents associated with the dry cask storage of spent fuel are already considered in the dry cask system's Final Safety Analysis Report. No new accident scenarios are created as a result of deleting non-applicable operational and administrative requirements. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed license amendment involve a significant reduction in a margin of safety?

No. As described above, the proposed changes reflect the reduced operational risks as a result of the spent nuclear fuel being transferred to dry casks within an ISFSI. The design basis and accident assumptions within the YNPS FSAR and the Defueled Technical Specifications relating to spent fuel are no longer applicable. The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities. In addition, the proposed changes do not result in a change in initial conditions, system response time, or in any other parameter affecting the course of a decommissioning activity accident analysis. Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

Based on the considerations noted above, it is concluded that the proposed changes will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Section Chief: Scott W. Moore.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 16, 2003.

Brief description of amendment request: The proposed amendment would revise the applicable Technical Specifications requirements for rod position monitoring during the current operating cycle (Cycle 22) to allow the use of an alternate method of determining rod position. This would be effective until repair of the indication system can be completed during the next shutdown of sufficient duration.

Date of publication of individual notice in ***Federal Register:*** January 24, 2003 (68 FR 3566).

Expiration date of individual notice: February 7, 2003, for comments; February 24, 2003, for hearings.

Florida Power and Light Company, Docket No. 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: November 26, 2002.

Brief description of amendments: The proposed license amendments would revise Technical Specifications (TSs) to increase the total spent fuel wet storage capacity by adding a spent fuel storage rack in the cask area in each unit's spent fuel pool. Also, it would revise the location called out in the Design Features sections 5.6.1.1a and b of the TSs referring to Updated Final Safety Analysis Report Appendix 14D, rather than referring to Westinghouse Report WCAP–14416–P.

Date of publication of individual notice in the ***Federal Register:*** January 28, 2003 (68 FR 4246).

Expiration date of individual notice: February 27, 2003.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 29, 2001, and its supplements dated August 29, 2001, and September 24, 2002.

Brief description of amendment: The amendment revises paragraph 2.C.(5), ''Physical Protection,'' of Facility Operating License No. DPR–61 to reference the Defueled Physical Security Plan that includes the security plan for the Independent Spent Fuel Storage Installation.

Date of issuance: January 30, 2003.

Effective date: January 30, 2003, and shall be implemented within 30 days from the date of issuance and prior to the transfer of spent nuclear fuel to the Independent Spent Fuel Storage Installation.

Amendment No.: 199.

Facility Operating License No. DPR–61: The amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44163). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2003.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: August 8, 2002, as supplemented October 23, 2002.

Brief description of amendment: The amendment authorized changes to the Updated Final Safety Analysis Report (USFAR) for Fermi 2 by allowing implementation of the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel Integrated Surveillance Program as the basis for demonstrating the compliance with the requirements of Appendix H, ''Reactor Vessel Material Surveillance Program Requirements,'' to 10 CFR part 50.

Date of issuance: January 30, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 152.

Facility Operating License No. NPF–43: Amendment authorizes changes to the USFAR.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56320). The October 23, 2002, supplemental letter provided additional clarifying information that did not change the original no significant hazards consideration determination or expand the amendment beyond the scope of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 18, 2002, as supplemented August 7, and October 9 and October 30, 2002, and January 15, 2003.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.7.15 in response to Boraflex degradation to provide revised spent fuel pool (SFP) storage criteria, and revised fuel enrichment and burnup requirements that take credit for soluble boron. TS 4.3.1 is revised to increase the required soluble boron credit from a concentration of 730 parts per million (ppm) to 850 ppm to ensure acceptable levels of subcriticality in the SFPs. Associated changes to the TS Bases are also included.

Date of issuance: February 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 210 & 191.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42820). The supplements dated August 7, and October 9 and October 30, 2002, and January 15, 2003, provided clarifying information that did not change the scope of the April 18, 2002, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: October 22, 2002.

Brief description of amendment: The amendment deletes TS 5.5.3, ''Post Accident Sampling System (PASS),'' and thereby eliminates the requirements to have and maintain the PASS at Columbia Generating Station. The amendment also addresses related changes to TS 5.5.2, ''Primary Coolant Sources Outside Containment,'' and License Condition 2.C.(13), ''Post Accident Sampling.''

Date of issuance: January 27, 2003.

Effective date: January 27, 2003, to be implemented within 60 days from the date of issuance.

Amendment No.: 184.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78518). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letters dated July 9, August 2, September 16, and November 7 and 22, 2002.

Brief description of amendment: This amendment increases the licensed power level by approximately 1.7 percent from 3,039 megawatts thermal (MWt) to 3,091 MWt. These changes result from increased feedwater flow measurement accuracy to be achieved by utilizing high accuracy ultrasonic flow measurement instrumentation.

Date of issuance: January 31, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 129.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 11, 2002 (67 FR 40022). The July 9, August 2, September 16, and November 7 and 22, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 24, 2001, as supplemented on May 22, 2002.

Brief description of amendment: The amendment revised information in the

Final Safety Analysis Report regarding the protection of the component cooling water (CCW) system from natural phenomena. The change addresses the fact that a portion of one safety-related loop of the CCW system is routed through the fuel storage building, where the structure was not designed to protect the CCW piping from the effects of natural phenomena.

Date of issuance: January 27, 2003.

Effective date: January 27, 2003.

Amendment No.: 214.

Facility Operating License No. DPR–64: Amendment revised the Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50466). The May 22, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 26, 2002, as revised by letters dated October 9 and 30, 2002.

Brief description of amendment: The amendment revises the definition of Operable in Technical Specification (TS) 1.0.K with respect to support system requirements for alternating current power sources. Conforming changes are also made to a specific support system TS in Sections 3/4.5, ''Core and Containment Cooling Systems'', 3/4.7, ''Station Containment Systems'', and 3/4.10, ''Auxiliary Electrical Power Systems,'' and associated Bases.

Date of Issuance: February 4, 2003.

Effective date: As of the date of issuance, and shall be implemented within 90 days.

Amendment No.: 213.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** (67 FR 78519). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: September 19, 2002, as supplemented December 26, 2002.

Brief description of amendments: The amendments add a new analytical method to Technical Specifications (TS) section 5.6.5, ''Core Operating Limits Report.'' The change supports the core design efforts used for the Unit 2 refueling outage which began on January 21, 2003.

Date of issuance: February 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 159 & 145.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63694). The December 26, 2002, supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 31, 2002, as supplemented by letter dated October 16, 2002.

Brief description of amendments: These amendments revised Technical Specifications (TSs) 3.8.2.1, ''DC Sources—Operating,'' and 3.8.2.2, ''DC Sources—Shutdown''; and added the new Specification 6.8.4.i, ''Battery Monitoring and Maintenance Program.'' The changes also included the relocation of the following TS items to a licensee-controlled program: (1) A number of surveillance requirements that require the performance of preventive maintenance, and (2) certain battery and battery cell parameter values that are periodically verified to monitor early indications of DC subsystem degradation.

Date of issuance: January 29, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 164 and 126.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58643). The supplement dated October 16, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: February 28, 2001, as supplemented by letter dated June 13, 2002.

Brief description of amendments: Revise the Technical Specifications to eliminate the requirement for at least one person qualified to stand watch to be present in the control room when nuclear fuel is stored in the spent fuel pool.

Date of issuance: January 31, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 183 and 170.

Facility Operating License Nos. DPR–39 and DPR–48: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34283).

The June 13, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of application for amendment: May 31, 2002, as supplemented July 19, and September 3, 2002.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.1.1.4, upper limit for the moderator temperature coefficient (MTC), from 0×10^{-4} change in reactivity per degree Fahrenheit ($\Delta k/k/°F$) to $+0.2 \times 10^{-4}$ $\Delta k/k/°F$ for power

levels up to 70 percent of rated thermal power (RTP), and ramping linearly to 0 $\times 10^{-4}$ Δk/k/°F from 70 percent to 100 percent RTP. The change is needed to address future core designs with higher energy requirements, associated with plant operation at higher capacity factors.

Date of issuance: February 6, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No.: 251.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58644). The July 19, and September 3, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 2003.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: March 27, 2002, as supplemented on October 7, 2002.

Brief description of amendment: The amendment revises the Technical Specifications section 3.6.3, ''Emergency Power Sources,'' to extend the current allowable outage time for an inoperable diesel generator from 7 days to 14 days, and section 3.4.4, ''Emergency Ventilation System,'' and section 3.4.5, ''Control Room Air Treatment System,'' to reflect the change to section 3.6.3.

Date of issuance: February 3, 2003.

Effective date: February 3, 2003.

Amendment No.: 179.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21290). The October 7, 2002, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 25, 2002. The application was initially submitted to the Nuclear Regulatory Commission with an incorrect date of April 25, 2001. The Nuclear Management Company, LLC, subsequently submitted a letter dated May 30, 2002, correcting the date of the application as April 25, 2002.

Brief description of amendment: The amendment changes Technical Specification (TS) 3.7/4.7, ''Containment Systems,'' to allow the use of 10 CFR part 50, Appendix J, Option B, for Types B and C containment leak rate testing and adds a new TS section 6.8.M, ''Programs and Manuals—Primary Containment Leakage Rate Testing Program.''

Date of issuance: February 4, 2003.

Effective date: As of the date of issuance and to be implemented within 75 days.

Amendment No.: 132.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56325).

The May 30, 2002, letter corrected the date of the application and did not change the NRC staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 25, 2002, as supplemented by letter dated October 23, 2002.

Brief description of amendments: These amendments revise the Susquehanna Steam Electric Station Final Safety Analysis Report (SSES FSAR) by replacing the current plant-specific reactor pressure vessel material surveillance program with the Boiling Water Reactor Integrated Surveillance Program.

Date of issuance: February 6, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 208 and 182.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the SSES FSAR.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56328). The October 23, 2002, supplemental letter provided additional information that clarified the application, but did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 23, 2002.

Brief description of amendment: The amendment updates the reference to 10 CFR 20.203 with the corresponding reference to 10 CFR 20.1601. Hope Creek Generating Station Technical Specification (TS) 6.12, ''High Radiation Area,'' is revised to be consistent with the Standard TSs, General Electric Plants (NUREG–1433, Rev. 2).

Date of issuance: January 30, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 142.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75884).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 21, 2002.

Brief description of amendments: The amendments revise the technical specifications (TSs) to replace reference to specific valves for preventing uncontrolled boron dilution. The revised TSs incorporate a general statement for preventing uncontrolled boron dilution, consistent with the improved standard TSs.

Date of issuance: January 27, 2003.

Effective date: January 27, 2003.

Amendment Nos.: Unit 1–149; Unit 2–137.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61686).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 23, 2002.

Brief description of amendments: The amendments relocated the shutdown margin limits to the Core Operating Limits Report and modified certain boration requirements consistent with NUREG–1431. The amendments also correct some typographical errors in the Technical Specification pages.

Date of issuance: February 4, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–150; Unit 2–138.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42830).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 4, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: November 6, 2002.

Brief description of amendments: The amendments revised the Browns Ferry Nuclear Plant, Units 2 and 3, Updated Final Safety Analysis Report (UFSAR) to modify the basis for TVA's compliance with the requirements of Appendix H to title 10 of the Code of Federal Regulations part 50, ''Reactor Vessel Material Surveillance Program Requirements.''

Date of issuance: January 28, 2003.

Effective date: As of the date of issuance, to be incorporated into the UFSAR at the time of its next update.

Amendment Nos.: 279 & 238.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the UFSAR.

Date of initial notice in ***Federal Register:*** November 26, 2002 (67 FR 70770). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 3, 2002, as supplemented October 17, 2002, and January 29, 2003.

Brief description of amendments: The amendments revise Technical Specification (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. Thise changes to SR 4.0.3 will allow an extension of up to 24 hours or the limit of the surveillance frequency, whichever is greater. The amendments also include editorial changes to make the revised TS consistent with the Standard TS for Westinghouse plants. In addition, the amendments include the adoption of the TS Bases Control Program listed in NUREG–1431, Revision 2.

Date of issuance: February 5, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 280 and 271.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68745). The January 29, 2003, supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 5, 2003.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 10th day of February, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–3689 Filed 2–13–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Summission for OMB Review: Comment Request Review of Expiring Information Collection: OPM 1647

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management submitted a request for renewal of authorization for an information collection to the Office of Management and Budget. OPM Form 1647, Combined Federal Campaign Eligibility Application, is used to review the eligibility of national, international, and local charitable organizations that wish to participate in the Combined Federal Campaign.

We estimate 1,400 OPM Forms 1647 will be completed annually. Each form takes approximately three hours to complete. The annual estimated burden is 4,200 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, Fax (202) 418–3251 or E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received by March 20, 2003.

ADDRESSES: Send or deliver comments to:

Curtis Rumbaugh, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5450, Washington, DC 20415; and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–3819 Filed 2–14–03; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25931; File No. 812–12881]

Vision Group of Funds, *et al.*; Notice of Application

February 10, 2003.

AGENCY: The Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), for an exemption from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15), thereunder.

APPLICANTS: Vision Group of Funds (the ''Trust'') and Manufacturers and Traders Company (''M&T Bank''), on behalf of M&T Asset Management (''M&T''), a business unit of M&T Bank.

SUMMARY OF APPLICATION: Applicants seek an order exempting the Applicants and certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust and shares of any other investment company or portfolio that is designed to fund insurance products and for which M&T Bank or any of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator (''Future Trusts'') (the Trust, together with Future Trusts, are the ''Trusts'') to be sold to and held by: (i) Separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as ''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies; (ii) qualified pension and retirement plans (''Qualified Plans'') outside of the separate account context; (iii) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (iv) M&T Bank or certain related corporations (collectively ''M&T Bank''); and (v) any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 (''General Accounts''), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

FILING DATES: The application was filed on September 9, 2002, and amended and restated on January 13, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 10, 2003 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, C. Grant Anderson, Esq., Reed Smith LLP, Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is registered with the Commission as an open-end management investment company and is organized as a Delaware business trust. M&T is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and serves as the investment adviser to the Trust. The Trust currently consists of twenty-one investment portfolios, including three investment portfolios that are sold only to separate accounts of insurance companies in conjunction with variable life and variable annuity contracts: Vision Large Cap Growth Fund II, Vision Large Cap Value Fund II and Vision Managed Allocation Fund—Moderate Growth II (each, a ''Fund,'' and collectively, the ''Funds''). The Trust or any Future Trusts may offer one or more additional investment portfolios in the future (also referred to as ''Funds'').

2. Shares of the Funds will be offered to separate accounts of affiliated and unaffiliated insurance companies (each, a ''Participating Insurance Company'') to serve as investment vehicles to fund Variable Contracts (as hereinafter defined). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration pursuant to exemptions from registration under section 3(c) of the 1940 Act (individually, a ''Separate Account'' and collectively, the ''Separate Accounts''). Shares of the Portfolios may also be offered to Qualified Plans, M&T Bank or certain related corporations (collectively ''M&T Bank''), and any other person permitted to hold shares of the Trusts pursuant to Treasury Regulation 1.817–5 (''General Accounts''), including the general account of any life insurance company whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

3. The Participating Insurance Companies at the time of their investment in the Trusts either have or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has or will enter into an agreement with the Trusts concerning such Participating Insurance Company's participation in the Funds. The role of the Trusts under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares of the Trusts to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

1. Applicants and certain life insurance companies and their Separate Accounts that currently invest or may hereafter invest in the Trust (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) seek exemptive relief from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trusts and shares of any Future Trusts to be sold to and held by: (a) Separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (b) Qualified Plans outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) M&T Bank or certain related corporations (collectively ''M&T Bank''); and (e) any General Accounts, including the general account of any life insurance company

whose separate account holds, or will hold, shares of the Trusts or certain related corporations.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is also granted to the investment adviser, principal underwriter, and depositor of the separate account. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT, if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides these exemptions apply only where all of the assets of the UIT are shares of management investment companies ''which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.''

4. The relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Funds are sold only to Qualified Plans, exemptive relief under Rule 6e–2 would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as ''extended mixed and shared funding.''

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account.'' Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding. The exemptions are also granted to the investment adviser, principal underwriter and depositor of the separate account.

6. The relief under Rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Funds are also to be sold to Qualified Plans or other eligible holders of shares as described above. Applicants note that if shares of the Funds were sold only to Qualified Plans, exemptive relief under Rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Funds' shares to Qualified Plans, to M&T Bank, or General Accounts to result in a prohibition against, or otherwise limit, a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Qualified Plans, M&T Bank or General Accounts. Applicants therefore request relief in order to have the participating insurance companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Funds' shares were to be sold only to Qualified Plans, M&T Bank, General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would be unnecessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, M&T Bank, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Consistent with the Commission's authority under section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, this Application requests relief for the class consisting of insurers and Separate Accounts that will invest in the Funds, and to the extent necessary, Qualified Plans, other eligible holders of shares and investment advisers, principal underwriters and depositors of such accounts.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any

company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management company.

11. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Trusts. Applying the monitoring requirements of section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

12. Moreover, since the Qualified Plans, M&T Bank and General Accounts are not themselves investment companies, and therefore are not subject to section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of Rules 6e–2 and 6e–3(T) under the 1940 Act).

14. Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

15. Applicants state that the sale of Fund shares to Qualified Plans, M&T Bank and General Accounts will not have any impact on the relief requested herein. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

16. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Similarly, M&T Bank and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, M&T Bank or General Accounts.

17. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if M&T Bank or an affiliate of M&T Bank were to serve in the capacity of trustee or named fiduciary with voting responsibilities, M&T Bank or the affiliates would have a fiduciary duty to

vote those shares in the best interest of the Qualified Plan participants.

18. In addition, even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

19. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase of shares of Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

20. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

21. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (Sept. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts (including variable life contracts). Section 817(h) of the Code in effect requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' if a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *.'' Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Fund, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders of any Fund.

22. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

23. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Fund.

24. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

25. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Fund. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Fund.

26. Each Fund will be managed to attempt to achieve the investment objective or objectives of such Fund, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

27. Applicants do not believe that the sale of the shares of the Funds to

Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those which would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

29. Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. 1.817–5(f)(3)(iii)) Thus, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Fund.

30. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Fund at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

31. Applicants state that there is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-term gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to Participating Insurance Companies and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds.

32. In connection with any meeting of shareholders, the soliciting Trust will inform each shareholder, including each Separate Account, Qualified Plan, M&T Bank and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Funds concerning participation in the relevant Fund. Shares of a Fund that are held by M&T Bank and any General Account will be voted in the same proportion as all variable contract owners having voting rights with respect to that Fund. However, M&T Bank and any General Account will vote their shares in such other manner as the Commission may require. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Trust, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

33. Applicants reviewed whether a ''senior security,'' as such term is defined under section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, M&T Bank or a General Account. Applicants concluded that the ability of the Trusts to sell shares of their Funds directly to Qualified Plans, M&T Bank or a General Account does not create a senior security. ''Senior security'' is defined under section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, M&T Bank, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Fund. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees (the ''Board'') of the Trust will consist of persons who are not ''interested persons'' of the Trust, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any Trustee or Trustees, then the operation of this condition will

be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Fund), M&T Bank, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Fund (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested Trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Fund and reinvesting such assets in a different investment vehicle including another Fund, or in the case of Participating Insurance Company Participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Trust, to withdraw such insurer's Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the Trust, M&T Bank or an affiliate of M&T Bank, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Fund held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges as provided in the Application will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares it owns through its Separate Accounts, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, M&T Bank or any of its affiliates, and any General Account will vote its shares of any Fund in the same proportion of all variable contract owners having voting rights with respect to that Fund; provided, however, that M&T Bank, any of its affiliates or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Fund, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the funds of the type described in the section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (a) shares of the Trust may be offered to Separate Accounts of Variable Contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict; and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the Application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in the Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Funds.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Qualified Plan executes an agreement with the Trust governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3829 Filed 2–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47342; File No. SR–NQLX–2003–02]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by Nasdaq Liffe Markets, LLC, Relating to Revised Listing Standards

February 10, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on January 15, 2003, Nasdaq Liffe Markets, LLC (''NQLX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NQLX also has previously filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''), together with written certifications under section 5c(c) of the Commodity Exchange Act[3] (''CEA'') on November 18, 2002 and January 6, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

First, NQLX proposes amending Rule 325 to specify the reportable position levels for security futures contracts that have 1,000 shares of the underlying security, rather than the usual 100 shares of the underlying security. Second, NQLX proposes adopting a rule change to its Rule 420 as it relates to exchange for physical transactions between two members. Pursuant to this change, instead of requiring the member selling the futures leg to submit the relevant trade information to NQLX, the rule would allow the two members to mutually agree on which member would submit the trade information to NQLX. The remaining changes to Rule 420 correct the numbering in the rule. Below is the text of the proposed rule changes.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b-7.

[3] 7 U.S.C. 7a-2(c).

Proposed new language is italicized. Proposed deletions are in [brackets].

Rule 325 Reportable Positions

(a) No change.

(b) For purposes of filings made or information provided to NQLX pursuant to CFTC regulations Part*s 15,* 17 and 18, each Member must report any open contract positions [of 200 contracts or more for] in Security Futures Contracts *of (i) 200 contracts or more if one contract represents 100 shares of common stock, shares of an exchange-traded fund, shares of a registered closed-end management investment company or 100 trust-issued receipts or American Depository Receipts, or (ii) 100 contracts or more if one contract represents 1,000 shares of an exchange-traded fund or shares of a registered closed-end management investment company or 1,000 trust-issued receipts.*

Rule 420 Exchange for Physical Trades

(b) Information Recording, Submission, and Dissemination.

(1) No change.

(2) As soon as practicable but no later than 30 minutes after arranging an Exchange for Physical Trade, the Member—when the transaction is between a Member and a Customer—and the Member selling the Futures Leg—when the transaction is between two Members *unless otherwise mutually agreed to by the two members*—must submit through the ATS the following information concerning the Exchange for Physical Trade:

(*3*[c]) NQLX will review the information submitted by the Member pursuant to Rule 420(b) for the proposed Exchange for Physical Trade and will post both sides of the Futures Leg to the account of, and send a confirmation to, the submitting Member if, at the time, the Exchange for Physical Trade appears to have satisfied the requirements of Rule 420.

(*4*[d]) After sending the confirmation for the Exchange for Physical trade, NQLX will disseminate through the ATS the following information:

(*i*[1]) the Futures Leg designated with a ''B'' to denote that the transaction was the Exchange for Physical Trade,

(*ii*[2]) delivery or expiration month,

(*iii*[3]) price of the Futures Leg,

(*iv*[4]) quantity of the Futures Leg,

(*v*[5]) put or call and exercise price of the Futures Leg (if applicable), and

(*vi*[6]) open or close position indicator (if applicable).

(*5*[e]) Prices reported for Exchange for Physical Trades will not trigger unexecuted Orders in the Central Order Book.

(*6*[f]) As soon as practicable, but no longer than 10 minutes, after receipt of confirmation for the Exchange for Physical Trade from NQLX, the submitting Member (or its Clearing Member, if applicable) must transfer through the Trade Registration System the applicable Futures Contract to the Member for the buyer of the Futures Leg (or its Clearing Member, if applicable).

(*7*[g]) As soon as practicable, but no longer than 10 minutes, after the Futures Leg appears on the Trade Registration System pursuant to Rule 420*(b)(6)*[f], the Member for the buyer of the Futures Leg (or its Clearing Member, if applicable) must accept the Futures Leg, and designate the buyer's Customer account number or identifier in, the Trade Registration System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rule changes, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

First, NQLX proposes adopting a rule addition to its Rule 325 to specify the reportable position levels for security futures contracts that have 1,000 shares of the underlying security, rather than the usual 100 shares of the underlying security. Second, NQLX proposes adopting a rule change to its Rule 420 related to the party that must submit trade information on exchange for physical transactions when the transactions are between two members. Under such circumstances, instead of requiring the member selling the futures leg to submit the relevant trade information to NQLX, the rule change would allow the two members to mutually agree on which member would submit information on the transaction to NQLX. If the two members could not agree on which one would submit the trade information to NQLX, then the member selling the futures leg would have the reporting responsibility. The remaining changes to Rule 420 correct the numbering in the rule.

2. Statutory Basis

NQLX files these proposed rule changes pursuant to section 19(b)(7) of the Act.[4] NQLX believes that these proposed rule changes are consistent with the requirements of the Commodity Futures Modernization Act of 2000,[5] including the requirement that trading in a listed security futures contract is not readily susceptible to manipulation of its price nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.[6] NQLX further believes that its proposed rule changes comply with the requirements under section 6(h)(3) of the Act[7] and the criteria under section 2(a)(1)(D)(i) of the CEA.[8] In addition, NQLX believes that its proposed rule changes are consistent with the provisions of section 6 of the Act,[9] in general, and section 6(b)(5) of the Act,[10] in particular, which requires, among other things, that the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices; and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Prior to the filing of the proposed rule change with the SEC, NQLX filed written certifications with the CFTC under section 5c(c)[11] of the CEA and CFTC Regulation Part 40.6[12] in which NQLX certified that its proposed changes to Rules 325 and 420 comply with the CEA. Proposed changes to Rules 325 and 420 were effective the day after their filing with the CFTC.

Within 60 days of the date of effectiveness of the proposed rule changes, the Commission, after

[4] 15 U.S.C. 78s(b)(7).

[5] Pub. L. 106–554, 114 Stat. 2763 (2000).

[6] *See* section 6(h)(3)(H) of the Act, 15 U.S.C. 78f(h)(3)(H).

[7] 15 U.S.C. 78f(h)(3).

[8] 7 U.S.C. 2(a)(1)(D)(i).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 7 U.S.C. 7a–2(c).

[12] 17 CFR 40.6.

consultation with the CFTC, may summarily abrogate the proposed rule changes and require that the proposed rule changes be refiled in accordance with the provisions of section 19(b)(1) of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR–NQLX–2003–02 and should be submitted by March 11, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3828 Filed 2–14–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster No. P006]

State of Oklahoma

As a result of the President's major disaster declaration for Public Assistance on February 4, 2003, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Beckham, Blaine, Caddo, Canadian, Custer, Kingfisher, Kiowa, Logan, Noble, Osage, Pawnee, Payne, Roger Mills and Washita Counties in the State of Oklahoma constitute a disaster area due to damages caused by a severe ice storm occurring from December 3, 2002, and continuing through December 4, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 7, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

For physical damage	Percent
Non-profit organizations without credit available elsewhere	3.324
Non-profit organizations with credit available elsewhere	5.500

The number assigned to this disaster for physical damage is P00611. (Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: February 5, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–3779 Filed 2–14–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459, Amdt. 8]

State of Texas

In accordance with a notice received from the Federal Emergency Management Agency, dated February 5, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to February 7, 2003.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 11, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–3831 Filed 2–14–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4279]

Determination Pursuant to Section 212(a)(3)(B) of the Immigration and Nationality Act (INA), Placing Entities on the Terrorist Exclusion List (TEL)

Acting under the authority of section 212(a)(3)(B) of the Immigration and Nationality Act (INA), as amended, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that each of the following entities is a ''terrorist organization'' under the meaning of the INA:

Al Taqwa Trade, Property and Industry Company Limited (f.k.a. Al Taqwa Trade, Property and Industry; f.k.a. Al Taqwa Trade, Property and Industry Establishment; f.k.a. Himmat Establishment)

Bank Al Taqwa Limited (a.k.a. Al Taqwa Bank; a.k.a. Bank Al Taqwa)

Nada Management Organization SA (f.k.a. Al Taqwa Management Organization SA)

Youssef M. Nada & Co. Gesellschaft M.B.H.

Ummah Tameer E-Nau (UTN) (a.k.a. Foundation for Construction; a.k.a. Nation Building; a.k.a. Reconstruction Foundation; a.k.a. Reconstruction of the Islamic Community; a.k.a. Reconstruction of the Muslim Ummah; a.k.a. Ummah Tameer I-Nau; a.k.a. Ummah Tameer E-Nau; a.k.a. Ummah Tameer I-Pau)

Loyalist Volunteer Force (LVF)

Ulster Defense Association (a.k.a. Ulster Freedom Fighters)

Afghan Support Committee (ASC) (a.k.a. Ahya ul Turas; a.k.a. Jamiat Ayat-ur-Rhas al Islamia; a.k.a. Jamiat Ihya ul Turath al Islamia; a.k.a. Lajnat el Masa Eidatul Afghania)

Revival of Islamic Heritage Society (RIHS) (a.k.a. Jamia Ihya ul Turath; a.k.a. Jamiat Ihia Al-Turath Al-Islamiya; a.k.a. Revival of Islamic Society Heritage on the African Continent) [Pakistan and Afghanistan; Kuwait office not designated]

This notice shall be published in the **Federal Register**.

Dated: November 6, 2002.

Colin L. Powell,

Secretary of State, Department of State (TE).

[FR Doc. 03–3850 Filed 2–14–03; 8:45 am]

BILLING CODE 4710–10–P

[13] 15 U.S.C. 78s(b)(1).

[14] 17 C.F.R. 200.30–3(a)(75).

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Intercity Bus Security Grant Program; Notice Modifying the Delivery Instructions for Receipt of Applications Under the Intercity Bus Security Grant Program

AGENCY: Transportation Security Administration, Department of Transportation.

Authority: Authority for this program is contained in the fiscal year 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 Stat. 820.

ACTION: Notice modifying delivery address for receipt of grant applications.

SUMMARY: This notice modifies the delivery address and instructions previously established for receipt of applications under the Intercity Bus Security Grant Program (Program Announcement #02MLPA0002) in 68 FR 2634, Jan. 17, 2003.

For applications sent by the U.S. Postal Service (USPS), the applicant should mail its application to: Mary Heying or Tony Corio, Attn: Intercity Bus Security Grants, Transportation Security Administration Headquarters, Office of Maritime and Land Security, West Tower, 9th Floor North, TSA–8, 400 Seventh Street, SW., Washington, DC 20590. An application received by the Office of Maritime & Land Security after the closing date will not be considered unless it was sent by at least first-class mail no later than 5 calendar days before the closing date or was sent by first-class mail and it was determined by TSA that late receipt was due solely to mishandling after receipt at TSA. Proof of mailing consists of a legibly dated USPS postmark; a legible mail receipt with the date of mailing stamped by the USPS; or a dated shipping label, invoice, or receipt from a commercial carrier. A private metered postmark will not be considered as proof of mailing. (**Note:** the USPS does not always provide a dated postmark. Before relying on this method, the applicant should check with its local post office.)

For applications delivered by hand or by a next-day express delivery service, the application should be delivered to: Transportation Security Administration Headquarters, Office of Maritime and Land Security, West Tower, 9th Floor North, 701 South 12th Street, Arlington, VA 22202, Attn: Mary Heying, Workstation #926BN, 571–227–1252 or Tony Corio, Workstation #924DN, 571–227–1233. Hand delivered applications will be accepted between 8:30 a.m. and 4 p.m. (e.s.t.) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted by the Office of Maritime & Land security after 4 p.m. (e.s.t.) on the closing date.

Note that a previous notice published in 68 FR 5975, Feb. 5, 2003, modified the deadline for receipt of applications to on or before 4 p.m. e.s.t., March 19, 2003.

ADDRESSES: Program Announcement #02MLPA0002 and application forms for the Intercity Bus Security Grant Program are available through the TSA Internet at *http://www.tsa.dot.gov* under Business Opportunities and Industry Partners.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Heying, Transportation Security Administration Headquarters, West Tower, 9th Floor North, TSA–8, 400 7th Street, SW., Washington, DC 20590, (phone: 571–227–1252, email: *Mary.Heying@tsa.dot.gov*), or Mr. Tony Corio (phone: 571–227–1233, email: *Tony.Corio@tsa.dot.gov*).

Dated: February 11, 2003.

Mark H. Johnson,

Deputy Assistant Administrator, Office of Maritime and Land Security.

[FR Doc. 03–3789 Filed 2–14–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Operation Safe Commerce Cooperative Agreement Program; Notice Modifying the Delivery Instructions for Receipt of Applications Under the Operation Safe Commerce Cooperative Agreement Program

AGENCY: Transportation Security Administration, Department of Transportation.

Authority: Authority for this program is contained in the fiscal year 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub. L. 107–206, 116 Stat. 820.

ACTION: Notice modifying delivery address for receipt of cooperative agreement applications.

SUMMARY: This notice modifies the delivery address and instructions previously established for receipt of applications under the Operation Safe Commerce Cooperative Agreement Program (Program Announcement #02MLPA0001) in 68 FR 5071, Jan. 31, 2003.

For applications sent by the U.S. Postal Service (USPS), the applicant should mail its application to: Mary Heying or Tony Corio, Attn.: Operation Safe Commerce Cooperative Agreement Program, Transportation Security Administration Headquarters, Office of Maritime and Land Security, West Tower, 9th Floor North, TSA–8, 400 Seventh Street, SW., Washington, DC 20590. An application received by the Office of Maritime & Land Security after the closing date will not be considered unless it was sent by at least first-class mail no later than 5 calendar days before the closing date or was sent by first-class mail and it was determined by TSA that late receipt was due solely to mishandling after receipt at TSA. Proof of mailing consists of a legibly dated USPS postmark; a legible mail receipt with the date of mailing stamped by the USPS; or a dated shipping label, invoice, or receipt from a commercial carrier. A private metered postmark will not be considered as proof of mailing. (**Note:** The USPS does not always provide a dated postmark. Before relying on this method, the applicant should check with its local post office.)

For applications delivered by hand or by a next-day express delivery service, the application should be delivered to: Transportation Security Administration Headquarters, Office of Maritime and Land Security, West Tower, 9th Floor North, 701 South 12th Street, Arlington, VA 22202, Attn: Mary Heying, Workstation #926BN, 571–227–1252 or Tony Corio, Workstation #924DN, 571–227–1233. Hand delivered applications will be accepted between 8:30 am and 4 pm (EST) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted by the Office of Maritime & Land Security after 4 pm (EST) on the closing date.

ADDRESSES: Program Announcement #02MLPA0001 and application forms for the Operation Safe Commerce Cooperate Agreement Program are available through the TSA Internet at *http://www.tsa.dot.gov* under Business Opportunities and Industry Partners.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Heying, Transportation Security Administration Headquarters, West Tower, 9th Floor North, TSA–8, 400 7th Street, SW., Washington, DC 20590, (phone 571–227–1252, email: *Mary.Heying@tsa.dot.gov*), or Mr. Tony Corio (phone: 571–227–1233, email: *Tony.Corio@tsa.dot.gov*).

Dated: February 11, 2003.

Mark H. Johnson,

Deputy Assistant Administrator, Office of Maritime and Land Security.

[FR Doc. 03–3790 Filed 2–14–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (''NOFA'') Inviting Applications for the FY 2003 Funding Round of the Financial Assistance Component of the Community Development Financial Institutions (''CDFI'') Program: Change of Application Deadlines; Policy Revision

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of change of application deadlines; policy revision.

Change of Application Deadlines: On February 4, 2003, the Community Development Financial Institutions Fund (the ''Fund'') announced in a NOFA for the Financial Assistance Component of the CDFI Program (68 FR 5738) that the deadline for applications for assistance through the Financial Assistance Component was March 10, 2003. On February 7, 2003, the Fund announced (68 FR 6540) that it was extending the deadline for applications for assistance through the Financial Assistance Component to March 17, 2003.

This notice is to announce that, due to unforeseen complications with the development of the application and related documents, the Fund again is extending the deadline for the submission of electronic and paper applications for the FY 2003 funding round of the Financial Assistance Component, to 5 p.m. ET on April 14, 2003. Please also note that for electronic applications timely submitted, applicants must submit original signature pages not later than 5 p.m. ET on April 16, 2003, in accordance with the instructions in the electronic application.

In addition, the Fund is extending the deadline for submission of requests for paper applications to 5 p.m. ET on March 21, 2003. The Fund will provide program and technical support related to the Financial Assistance Component application between the hours of 9 a.m. and 5 p.m. ET through April 11, 2003. The Fund will not respond to telephone calls or e-mails concerning the application that are received after 5 p.m. ET on April 11, 2003, until after the Financial Assistance Component application deadline on April 14, 2003.

Further, the Fund has extended certain other deadlines, as follows. An application for a FY 2003 Financial Assistance Component award will not be considered unless: (a) The applicant is already certified as a CDFI with a certification expiration date after June 30, 2003; or (b) the Fund receives from an applicant a complete CDFI certification application no later than March 7, 2003, evidencing that the applicant can be certified as a CDFI. With respect to any CDFI that is currently certified by the Fund and whose certification expiration date is on or before June 30, 2003, the Fund must receive an application for re-certification no later than March 7, 2003, evidencing that the applicant can be re-certified as a CDFI.

Policy Revision

The Fund has determined that it is appropriate to revise the definition of Category I applicants, set forth in the February 4, 2003 NOFA for the Financial Assistance Component, as follows: Category I includes CDFIs that have capitalization needs up to and including $1,000,000 and total assets as of December 31, 2002 that range up to $500 million (for insured depository institutions and depository institution holding companies), up to $25 million (for insured credit unions), or up to $25 million for other CDFIs. This policy revisions comports with the definition of eligible CDFI Partner found in the NOFA for the FY 2003 funding round of the Bank Enterprise Award (BEA) Program (68 FR 5727).

All other information and requirements set forth in the February 4, 2003 NOFA for the Financial Assistance Component shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Awards Manager. The Program Operations Manager and the Awards Manager may be reached 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. Technical support related to the electronic application can be obtained by calling (202) 622–2455 and selecting option 1, then option 2, and then option 9, or by e-mail at *ithelpdesk@cdfi.treas.gov.* These are not toll free numbers.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: February 12, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–3940 Filed 2–14–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8275 and 8275–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8275, Disclosure Statement, and Form 8275–R, Regulation Disclosure Statement.

DATES: Written comments should be received on or before April 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or Larnice.Mack@irs.gov, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disclosure Statement (Form 8275) and Regulation Disclosure Statement (Form 8275–R).

OMB Number: 1545–0889.

Form Number: Forms 8275 and 8275–R.

Abstract: Internal Revenue Code section 6662 imposes accuracy-related penalties on taxpayers for substantial understatement of tax liability or negligence or disregard of rules and regulations. Code section 6694 imposes

similar penalties on return preparers. Regulations sections 1.662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation, on Form 8275–R.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 5 hrs. 35 min.

Estimated Total Annual Burden Hours: 5,575,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–3860 Filed 2–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–34–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–34–91 (TD 8396), Conclusive Presumption of worthlessness of Debts Held by Banks (Section 1.166–2).

DATES: Written comments should be received on or before April 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (Larnice.Mack@irs.gov), Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Conclusive Presumption of Worthlessness of Debts Held by Banks.

OMB Number: 1545–1254.

Regulation Project Number: FI–34–91.

Abstract: Section 1.166–2(d)(3) of this regulation allows a bank to elect to determine the worthlessness of debts by using a method of accounting that conforms worthlessness for tax purposes to worthlessness for regulatory purposes, and establish a conclusive presumption of worthlessness. An election under this regulation is treated as a change in accounting method.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–3861 Filed 2–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

DATES: Written comments should be received on or before April 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov,* or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

OMB Number: 1545–0805.

Form Number: 5472.

Abstract: Form 5472 is used to report information about transactions between a U.S. corporation that is 25% foreign owned or a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRS uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 75,000.

Estimated Time Per Response: 24 hrs. 17 min.

Estimated Total Annual Burden Hours: 1,821,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–3862 Filed 2–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–104–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–104–90 (TD 8390), Tax Treatment of Salvage and Reinsurance (§ 1.832–4).

DATES: Written comments should be received on or before April 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Treatment of Salvage and Reinsurance.

OMB Number: 1545–1227.

Regulation Project Number: FI–104–90.

Abstract: Section 1.832–4(d) of this regulation allows a nonlife insurance company to increase unpaid losses on a yearly basis by the amount of estimated salvage recoverable if the company discloses this to the state insurance regulatory authority.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 2003.

Carol Savage,

Program Analyst.

[FR Doc. 03–3863 Filed 2–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Chiropractic Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Chiropractic Advisory Committee will meet Tuesday, March 25, 2003, from 8:30 a.m. until 5 p.m. and Wednesday, March 26, 2003, from 8:30 a.m. until 4 p.m. at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room 230, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide direct assistance and advice to the Secretary of Veterans Affairs in the development and implementation of the chiropractic health program. Matters on which the Committee shall assist and advise the Secretary include protocols governing referrals to chiropractors and direct access to chiropractic care, scope of practice of chiropractic practitioners, definitions of services to be provided and such other matters as the Secretary determines to be appropriate.

On March 25, the Committee will receive an update on the status of the chiropractic occupational study and discuss the scope of chiropractic services, services to be provided in the VA chiropractic program, and protocols governing direct access and referrals to chiropractors. On March 26, the Committee will continue discussions on the items listed above and, at the end of the day, discuss the agenda for the next meeting and plan meeting dates for FY 2004.

On March 25, from 3 p.m. to 5 p.m., the Committee will provide time for oral statements from the public on the issues under discussion. Members of the public who wish to make a brief oral presentation at this meeting must contact Ms. Sara McVicker, Committee Manager, in writing via fax at (202) 273–9148 or via e-mail at *sara.mcvicker@mail.va.gov* no later than noon eastern time Friday, March 21, 2003, in order to have time reserved on the agenda. Requests to be scheduled for oral presentations should not be mailed via United States Postal Service due to delivery delays resulting from security measures. Opportunities for oral comments will be limited to no more than five (5) minutes per speaker and no more than 90 minutes total. Persons who wish their oral statement to become part of the Committee's records and available to the public on the Committee's internet site must submit a written or electronic copy of the statement at the time of the meeting. Persons making oral statements are requested to bring 13 copies of their statement for the Committee and an additional 20 copies for other members of the public.

Any member of the public wishing to attend the meeting is requested to contact Ms. McVicker, RN, MN, at (202) 273–8558 by noon eastern time on March 21, 2003, in order to facilitate entry to the building.

The Committee will accept written comments from interested parties on issues under discussion and other matters relating to the development and implementation of the chiropractic health program within the Veterans Health Administration. It is preferred that such comments be transmitted electronically to the Committee at *sara.mcvicker@mail.va.gov* or comments may be mailed to: Chiropractic Advisory Committee, Primary and Ambulatory Care SHG (112), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: February 10, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–3827 Filed 2–14–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Medical Research Service Merit Review will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Alcoholism & Drug Dependence	March 17, 2003	Holiday Inn Central.
Immunology & Dermatology	March 17–18, 2003	Holiday Inn. Central.
Neurobiology-D	March 20–21, 2003	Hotel Washington.
Infectious Diseases	March 20–21, 2003	Holiday Inn. Central.
Surgery	March 24, 2003	Hotel Washington.
Oncology	March 24–25, 2003	Hotel Washington.
Mental Health & Behav Sciences	March 25–26, 2003	Hotel Washington.
Cardiovascular Studies	March 27, 2003	Holiday Inn. Central.
Epidemiology	March 28, 2003	Holiday Inn. Central.
Gastroenterology	March 31–April 1, 2003	Holiday Inn. Central.
Respiration	April 1, 2003	Holiday Inn. Central.
Endocrinology	April 3–4, 2003	Marriott Residence Inn.
Nephrology	April 7, 2003	Hotel Washington.
General Medical Science	April 8, 2003	Hotel Washington.
Hematology	April 11, 2003	Holiday Inn. Central.
Clinical Research Program	April 15, 2003	Holiday Inn. Central.
Neurobiology-C	April 25, 2003	Holiday Inn. Central.
Aging and Clinical Geriatrics	April 25, 2003	Holiday Inn. Central.
Medical Research Service Merit Review Committee	June 5, 2003	Marriott Residence Inn.

The addresses of the hotels are:

Holiday Inn. Central., 1501 Rhode Island Avenue, NW., Washington., DC

Hotel Washington., 515—15th Street, NW., Washington., DC

Marriott Residence Inn. (Thomas Circle), 1199 Vermont Avenue, NW., Washington., DC

These subcommittee meetings are for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these subcommittee meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 408–3630.

Dated: February 7, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–3826 Filed 2–14–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,

February 18, 2003

Part II

Office of Government Ethics

5 CFR Parts 2637 and 2641

Post-Employment Conflict of Interest Restrictions; Proposed Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2637 and 2641

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: Since 1980, 5 CFR part 2637 (formerly 5 CFR part 737) has provided guidance concerning the post-employment conflict of interest restrictions of 18 U.S.C. 207. As a result of amendments to section 207 that became effective January 1, 1991, employees terminating service in the executive branch or in an independent agency (or terminating service from certain high-level Government positions) since that date are subject to substantially revised post-employment restrictions. The purpose of part 2641 is to provide regulatory guidance explaining the scope and content of the statutory restrictions as they apply to employees terminating service on or after January 1, 1991. This proposed rule would expand the guidance previously published in part 2641 as interim or interim final rules and make minor modifications to those earlier rulemakings. It would also remove part 2637 from 5 CFR.

DATES: Comments are invited and must be received on or before May 19, 2003.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Richard M. Thomas. Comments may also be sent electronically to OGE's Internet E-mail address at *http://www.usoge.gov.* The subject line of E-mail messages should include the following reference: ''Comments on proposed post-employment conflict of interest rule.''

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics; Telephone: 202–208–8000: TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of Post-Employment Regulatory Guidance

I. Rulemaking History

Since its enactment in 1962, 18 U.S.C. 207 has remained the primary source of post-employment restrictions applicable to former officers and employees of the executive branch and of independent agencies. In 1979 (interim rule) and 1980 (final rule), the Office of Government Ethics (OGE) published regulatory guidance concerning section 207 as codified at 5 CFR part 737 (now 5 CFR part 2637). *See* OGE's regulations issued at 44 FR 19974–19988 (April 3, 1979), 45 FR 7402–7431 (February 1, 1980), 54 FR 50229–50231 (December 5, 1989), and 56 FR 3961–3965 (February 1, 1991), as amended, redesignated and corrected over the years.

Section 207 was substantially revised by the Ethics Reform Act of 1989, Pub. L. 101–194, 103 Stat. 1716, with technical amendments enacted by Pub. L. 101–280, 104 Stat. 149 (1990). As a result of these and subsequent amendments, employees terminating Government service (or service in certain high-level Government positions) on or after January 1, 1991, are subject to revised substantive prohibitions.

Pursuant to authority set forth in the Ethics in Government Act of 1978, as amended, and Executive Order 12674, as modified by Executive Order 12731 (hereinafter referred to as Executive Order 12674), OGE published executive branch guidance concerning certain aspects of the new version of 18 U.S.C. 207 on February 1, 1991 (56 FR 3961–3965), now codified at 5 CFR part 2641.[1] For purposes of section 207(c), the 1991 interim rule (1) Established procedures for exempting senior employee positions; (2) designated separate departmental and agency components; and (3) established procedures for future designations and modification of designations of departmental or agency components. The appendices to part 2641 reserved for listings of exemptions and designations were subsequently amended by final rules published at 57 FR 3115–3117 (January 28, 1992), 57 FR 11673 (April 7, 1992), 58 FR 33755–33756 (June 21, 1993), 62 FR 26915–26918 (May 16, 1997), 64 FR 5709–5710 (February 5, 1999), and, most recently, 68 FR 4681–4684 (January 30, 2003).

As described below in the discussions of §§ 2641.204, 2641.301(j) and 2641.302 as proposed, this proposed rule would make further minor modifications to existing part 2641. In addition, it would expand part 2641 to provide comprehensive guidance concerning 18 U.S.C. 207 as applicable to individuals terminating service on or after January 1, 1991 (or service in certain high-level Government positions), incorporating amendments to section 207 enacted subsequent to the Ethics Reform Act.[2] As discussed more fully below, a future rulemaking would supplement the preliminary guidance at proposed §§ 2641.203 and 2641.206 concerning 18 U.S.C. 207(b) and (f).

This proposed rule does not address very limited amendments enacted on December 17, 2002, in section 209(d) of the E-Government Act of 2002, Pub. L. 107–347. These amendments, which pertain only to assignees from private sector organizations under the newly authorized Information Technology Exchange Program, had not been enacted when the proposed rule was developed and will not be effective until April 16, 2003, subsequent to the issuance of the proposed rule. *See* section 402(a)(1), Pub. L. 107–347. OGE invites comments concerning interpretation of these amendments—which add a new category of senior employee under section 207(c)(2)(A)(v) and a new restriction on contract advice in section 207(l)—which will be addressed in the final rule, as appropriate.

OGE is proposing to discontinue publication of 5 CFR part 2637. Due to the passage of time, employees who terminated service prior to January 1, 1991, could no longer be subject to any of the substantive restrictions of the previous version of 18 U.S.C. 207 other than the permanent bar for particular matters involving specific parties. Former employees, agency ethics officials and other interested parties can continue to consult the last edition of

[1] OGE also issued, by Memoranda to Designated Agency Ethics Officials, General Counsels and Inspectors General, summaries of the restrictions of 18 U.S.C. 207, as amended, on October 26, 1990, November 5, 1992, and February 17, 2000. The current version of the summary may be found on OGE's Web site at *http://www.usoge.gov* under ''DAEOgrams'' for the year 2000.

[2] The statute has been amended several times since the Ethics Reform Act. Section 101(b)(8)(A) of Pub. L. 101–509, 104 Stat. 1389, amended 18 U.S.C. 207(c)(2)(A)(ii) to change the pay-based threshold for purposes of determining the applicability of section 207(c) from the rate for GS–17 to the rate for level V of the Executive Schedule. Section 705(a) of Pub. L. 102–25, 105 Stat. 75 reinstated section 207(k) authorizing Presidential waivers of section 207 in narrow circumstances, a provision that was later amended by Pub. L. 102–190. Section 609 of Pub. L. 102–395, 106 Stat. 1828, amended section 207(f) to extend that one-year restriction to three years in the case of any individual assuming the office of U.S. Trade Representative after October 6, 1992, the effective date of the law. Subsequently, section 21(a) of Pub. L. 104–65, 109 Stat. 691, amended section 207(f)(2) to permanently bar both the U.S. Trade Representative and the Deputy U.S. Trade Representative from engaging in the activities prohibited by section 207(f). Sections 5 and 6 of Pub. L. 104–179, 110 Stat. 1566, changed the rate of basic pay triggering ''senior employee'' status and added a new exception permitting former high-level officials to represent certain candidates and political organizations notwithstanding section 207(c) or (d). Finally, section 102(a) of Pub. L. 105–244, 112 Stat. 1585, made a conforming change to the exception at section 207(j)(2)(B) when it amended the definition of ''institution of higher learning'' in title 20 of the United States Code. (Pub. L. 103–322, 108 Stat. 1796 made only two very minor grammatical changes to section 207(c).)

the CFR in which part 2637 was published, for interpretive guidance concerning the permanent bar and relevant exceptions as applicable to employees who terminated service before January 1, 1991. OGE will maintain a copy of part 2637 and suggests that all designated agency ethics officials keep a copy in their files.

As required by section 201(c) of Executive Order 12674, OGE is publishing this proposed rule after obtaining the concurrence of the Department of Justice. We also consulted with the Office of Personnel Management pursuant to title IV of the Ethics in Government Act of 1978, as amended. Section 402 of that Act provides, among other things, that the Director of OGE shall provide, in consultation with the Office of Personnel Management (OPM), overall direction of executive branch policies relating to preventing conflicts of interest, and develop, in consultation with the Justice Department and OPM, rules and regulations pertaining to the identification and resolution of conflicts of interest.

Subpart A—General Provisions

Proposed § 2641.101—Purpose

Proposed § 2641.101(a) explains that 18 U.S.C. 207 does not bar employment with any particular employer. Rather, it prohibits certain acts which involve, or may appear to involve, the unfair use of prior Government employment. The section would stress that the proscribed activities are prohibited even if they are undertaken for no compensation. The section would also note that the restrictions are personal to the employee and that they are not imputed to others, such as a law partner of a former employee. On the other hand, we have inserted a parenthetical cross-reference to the note following proposed § 2641.103 concerning the punishment under 18 U.S.C. 2 of a person or entity who ''aids, abets, counsels, commands, induces, or procures commission'' of a violation of 18 U.S.C. 207.

Proposed § 2641.101(b) makes two important points. First, it would emphasize that part 2641 provides interpretive guidance concerning the application of 18 U.S.C. 207 to former employees of the executive branch or of certain independent agencies of the Federal Government of the United States, including current employees who formerly served in ''senior'' or ''very senior'' employee positions. Second, although certain of the statute's provisions also apply to former employees of the District of Columbia, Members and elected officials of Congress and legislative staff, and employees of independent agencies in the legislative and judicial branches, the proposed paragraph specifically states that part 2641 is not intended to provide guidance to those individuals.

The note following proposed § 2641.101(b) warns that part 2641 does not purport to interpret post-employment restrictions that may be contained in laws or authorities other than section 207. Thus, for example, a former employee must comply with 18 U.S.C. 203 which restricts the acceptance of compensation in connection with certain representational activities undertaken by the employee or others at a time when the former employee was still serving with the Government. Under 41 U.S.C. 423(d), a former agency official may not accept compensation from a contractor for one year as an employee, officer, director, or consultant if the former official: (1) Served in certain procurement positions at the time the contractor was selected for or awarded a contract in excess of $10,000,000; (2) served in certain positions relating to the administration of a contract with the contractor in excess of $10,000,000; or (3) personally made certain decisions valued in excess of $10,000,000 in relation to a contract with the contractor. *See* 48 CFR part 3. The proposed note does not refer to restrictions contained in any professional codes of conduct, as these are outside the jurisdiction of OGE.

The proposed note does not purport to set forth an exhaustive list of all post-employment restrictions, including agency-specific or position-specific restrictions. We were concerned that the burden associated with compiling and maintaining an exhaustive (and accurate) list would outweigh the benefit of such a listing in a regulation intended to provide guidance relating to 18 U.S.C. 207. If history is any indicator, post-employment restrictions are frequently amended, suspended or abolished, then amended again or reinstated (*see, e.g.,* the legislative history of 41 U.S.C. 423(d)). We also foresaw difficulties in defining the standards for inclusion in such a listing.

Proposed § 2641.102—Applicability

Section 207 has been amended several times over the years. Proposed § 2641.102 traces the most significant of these amendments and explains that, as a consequence of these changes, former employees are subject to varying post-employment restrictions depending upon the date of their termination from Government service (or from a ''senior'' or ''very senior'' employee position). Section 2641.102 as proposed indicates whether an employee should consult 5 CFR part 2637 or part 2641 for regulatory guidance.

A note following § 2641.102 as proposed would warn that the guidance in part 2641 incorporates all amendments to 18 U.S.C. 207 enacted after the Ethics Reform Act of 1989 (and the related technical amendments to that Act), except as superseded. Significantly, as would be explained in the note, an individual who terminated Government service (or a ''senior'' or ''very senior'' employee position) before one or more of these amendments became effective would have become subject to a version of section 207 other than that reflected in part 2641 as proposed.

The substantive post-Ethics Reform Act amendments have concerned the applicability of sections 207(c), (d), or (f), the waiver authority in section 207(k), and the definition of ''institution of higher learning'' in section 207(j)(2)(B). The one-year restriction of section 207(c) has expired as to any former senior employee covered by a version of that restriction other than that described in part 2641. Moreover, the prior versions of section 207(f) are of relevance only in relation to the length of the restriction as it applied to a former United States Trade Representative or former Deputy United States Trade Representative who terminated service in the early 1990s. And, since the waiver authority in section 207(k) has not yet been utilized, a section 207(k) waiver would, in the future, be granted in accordance with part 2641, once it is finally adopted.

As discussed earlier, OGE is proposing to discontinue publication of 5 CFR part 2637. Since proposed § 2641.102(b) indicates that part 2637 should be consulted in relation to employees who terminated service prior to 1991, that section would also note the edition of the CFR in which part 2637 was last published.

Proposed § 2641.103—Enforcement and Penalties

It is the role of ethics officials, both at OGE and elsewhere, to give advice concerning the meaning of 18 U.S.C. 207. Section 2641.103(a) of the proposed rule notes that agencies are required by 28 U.S.C. 535 to report to the Attorney General any information, allegations, or complaints of possible violations of the laws in title 18 of the United States Code involving Government officers and employees, including violations of 18 U.S.C. 207 by former officers and employees.

When a matter involving a Federal conflict of interest law is referred to the

Department of Justice by an agency, 5 CFR 2638.603 requires that an agency concurrently notify the Director of OGE of the referral unless otherwise prohibited by law. The Office of Government Ethics has developed an optional ''Notification of Conflict of Interest Referral'' reporting form (OGE Form 202) that agencies can use for this purpose. After the final disposition of a referral, including any disciplinary or corrective action taken by the agency, agencies are required further to notify the Director of such disposition.

Proposed § 2641.103(b) cross-references the penalties and injunctions authorized to be imposed for violations of 18 U.S.C. 207. The section refers to 18 U.S.C. 216(a), (b) and (c) which, respectively, set forth the imprisonment terms and criminal fines for felony and misdemeanor violations of section 207, authorize the Attorney General to take actions to impose civil penalties for violations of section 207, set forth fine amounts, and authorize the Attorney General to seek injunctive relief to prohibit conduct that violates section 207.

The note proposed to follow § 2641.103 warns that a person or entity who ''aids, abets, counsels, commands, induces, or procures'' a violation of 18 U.S.C. 207 is punishable as a principal under 18 U.S.C. 2.

Notably, the new version of 18 U.S.C. 207 no longer provides for the administrative sanctions that were formerly authorized by the pre-Ethics Reform Act version of section 207(j). These procedures remain available, however, in the case of employees who terminated Government service prior to January 1, 1991. A number of agencies continue to publish procedures implementing former section 207(j). Given the passage of time, however, agencies may wish to weigh the likelihood that these procedures would be utilized against other factors, including the expense of continued publication and the availability of civil remedies.

Proposed § 2641.104—Definitions

Proposed § 2641.104 defines a number of terms that are used throughout the regulation. Although the terms are listed in proposed § 2641.104 in alphabetical order, they are discussed here *out of order* to facilitate our discussion. Other terms or phrases are defined in subsequent sections of the proposed regulation and are discussed further below.

The proposed definitions in § 2641.104 generally are intended to be consistent with definitions of the same terms previously published in 5 CFR part 2637. In some cases, we have altered the wording in order to clarify the definition, ensure consistency with other OGE regulations, or add additional information to reflect an OGE, Department of Justice, or judicial interpretation that was not incorporated into part 2637. Several of the definitions were included in the interim rule published in 1991 at part 2641 to permit the immediate exercise of the OGE Director's authority to designate departmental and agency components for purposes of 18 U.S.C. 207(c) and to waive certain positions from sections 207(c) and (f). The proposed rule also would make several modifications to the definitions in existing part 2641 in order to clarify the meaning or update the definitions consistent with current interpretations.

The term ''employee'' is used in 18 U.S.C. 207 in a number of contexts. Primarily, the term ''employee'' is used in section 207 to describe the individuals subject to section 207 and to identify the current Government officials with whom post-employment contact is restricted and the decisions of whom a former senior or very senior employee cannot seek to influence on behalf of a foreign entity. The term is, however, used for other purposes in section 207 and in proposed part 2641. Thus, for example, the exception in section 207(j)(2)(A) benefits an individual who becomes an ''employee'' of certain specified entities, such as a State or local government. *See* proposed § 2641.301(c). Moreover, in the proposed regulation, we use the term ''employee'' to refer to an individual's employment relationship with a non-Federal entity. As proposed, § 2641.104 defines the term for the purpose of identifying the individuals subject to section 207. (The definition would exclude certain individuals who are subject to section 207 but for whom part 2641 was not intended to provide guidance, such as employees of independent agencies in the legislative or judicial branches.) Proposed § 2641.104 emphasizes that the definition is modified elsewhere in the regulation, as necessary, when the term ''employee'' is used for other purposes.

Consistent with 18 U.S.C. 202(a) and (c), the term ''employee'' is defined in proposed § 2641.104 to exclude enlisted members of the Armed Forces, the President, and the Vice President (except, with respect to the Vice President, as otherwise provided). Relevant provisions of part 2641 as proposed would specifically indicate that the Vice President is subject to 18 U.S.C. 207(d) and (f) and that, in certain circumstances, communications to or appearances before the President and Vice President are prohibited. For purposes of clarity, the proposed definition of ''former employee'' emphasizes that the Vice President is a ''former employee'' only for purposes of sections 207(d) and (f).

The proposed definition of ''employee'' includes an individual appointed or detailed under the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3371–3376. The IPA authorizes the assignment of employees of State or local governments (and certain other entities) to Federal agencies. Under 5 U.S.C. 3374(a), an individual who is assigned to a Federal agency may be ''appointed'' in the agency or may be deemed ''on detail'' to the agency. The IPA specifically provides that an individual, whether appointed or on detail to a Federal agency, is deemed an ''employee'' for purposes of 18 U.S.C. 207. 5 U.S.C. 3374(c)(2). The regulation would also acknowledge that an individual may be subject to section 207 under the terms of a statute other than the IPA.

The proposed definition of ''employee'' also excludes officers or employees of the District of Columbia. Although former employees of the District of Columbia must comply with 18 U.S.C. 207(a)(1) and (a)(2), proposed § 2641.101(b) emphasizes that part 2641 ''is not intended to provide guidance to those individuals.'' Moreover, we were also persuaded to exclude District of Columbia officials from the definition of ''employee'' since section 207(a)(3) indicates that post-employment contacts with District of Columbia officials are not with ''any officer or employee of any department, agency, court, or court-martial of the United States'' within the meaning of sections 207(a)(1) and (a)(2).

''State'' is defined in proposed § 2641.104 to include the District of Columbia. The definition of ''State'' in 18 U.S.C. 207(j)(7) specifically defines the term as including the District of Columbia. We also propose to define the District of Columbia as a State in view of the exceptions at sections 207(j)(1) and (j)(2) which permit a former employee to engage in otherwise prohibited representational activity on behalf of certain governments. We defined the District of Columbia as a State notwithstanding language in the exception at section 207(j)(1) which, since it refers to the District of Columbia separately, distinguishes the District of Columbia government from State and local governments. In this regard, we noted that the wording of section 207(j)(1) also distinguishes the District of Columbia government from the United States Government. We decided

that the District of Columbia must have been listed separately in section 207(j)(1) for purposes of indicating the exception's applicability to former District of Columbia employees who act on behalf of that government.

As defined in proposed § 2641.104, ''Government service'' means ''a period of time during which an individual is employed by the Federal Government.'' The proposed definition provides some guidance concerning when service ends in the case of ''special Government employees,'' including some advisory committee members and Reserve officers of the Armed Forces and officers of the National Guard of the United States. As defined in 18 U.S.C. 202(a), a special Government employee (SGE) is an officer or employee of the executive branch or any independent agency ''who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis * * *.'' Many of these individuals serve the Government only a few days per year, often returning to private sector employment during interim periods.

In the case of civilians who serve the executive branch or independent agencies as SGEs, the definition of ''Government service'' proposed in § 2641.104 indicates that Government service refers to ''the period of time covered by the individual's appointment (or other act evidencing employment with the Government), regardless of any interval or intervals between days actually served.'' Thus, sections 207(a)(1), (a)(2), and (b) are not triggered each time there is an interval between the days on which a civilian SGE actually performs work. Example 4 following the definition of ''former employee'' in proposed § 2641.104 is illustrative.

In the case of a Reserve or National Guard officer, status as an SGE is related to the performance of active duty or active duty for training. More specifically, unless otherwise an employee, a Reserve or National Guard officer is classified as an SGE only while on active duty involuntarily, while on active duty for training for any length of time, or while serving voluntarily on extended active duty for 130 days or less. *See* 18 U.S.C. 202(a). The definition of ''Government service'' in proposed § 2641.104 indicates that, in the case of Reserve or National Guard officers, the end of a period of active duty or active duty for training as an SGE is considered the end of Government service for purposes of triggering the application of sections 207(a)(1), (a)(2), and (b). *See* example 5 following the proposed definition of ''former employee'' in § 2641.104. During periods when not serving on active duty, officers maintain their Reserve or National Guard status—categorized as either ''active'' or ''inactive''—but they are not considered SGEs. Like civilians, Reserve and National Guard officers are, while special Government employees, subject to 18 U.S.C. 203 and 205. Similar to section 207, these statutes restrict an individual's ability to represent others before Federal departments, agencies, or courts.

The definition of the term ''executive branch'' derives from 18 U.S.C. 202(e)(1). According to 18 U.S.C. 202(e)(1), the executive branch includes ''each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch.'' The term ''executive agency'' is defined in 5 U.S.C. 105 to mean ''an Executive department, a Government corporation, and an independent establishment.'' The ''Executive departments'' are enumerated in 5 U.S.C. 101. Accordingly, proposed § 2641.104 states that the term ''executive branch'' includes ''an Executive department as defined in 5 U.S.C. 101, a Government corporation, and an independent establishment (other than the General Accounting Office) * * * and also includes any other entity or administrative unit in the executive branch.'' The definitions of the ''judicial'' and ''legislative'' branches are from corresponding definitions in 18 U.S.C. 202(e)(2) and (3). Following 18 U.S.C. 202(e)(3)(B), we include the General Accounting Office (GAO) in our proposed definition of ''legislative branch'' and specifically exclude GAO from our proposed definition of ''executive branch.''

We determined that it would be appropriate to define the term ''Government corporation'' by reference to two separate statutory provisions, one in title 5 and one in title 18 of the United States Code. For purposes of determining the employees subject to 18 U.S.C. 207, we propose to use the definition of ''Government corporation'' in 5 U.S.C. 103. As defined in that section for purposes of Government personnel rules, a Government corporation means a corporation owned or controlled by the Government of the United States. In contrast, we propose to rely on the definition in 18 U.S.C. 6 when necessary to identify the employees with whom post-employment contact is restricted, to describe matters to which the United States is a party or has a direct and substantial interest, to specify the decisions of whom a former senior or very senior employee cannot seek to influence on behalf of a foreign entity, and to explain when an activity will be deemed undertaken on behalf of the United States. A corporation is an ''agency'' as defined in 18 U.S.C. 6 if it is a corporation ''in which the United States has a proprietary interest.'' The Department of Justice's Office of Legal Counsel has distinguished a proprietary interest from one that is merely ''custodial or incidental'' as determined by reference to the corporation's ''functions, financing, control, and management.'' 12 Op. Off. Legal Counsel 84 (1988). The proposed definition incorporates this Office of Legal Counsel guidance.

As defined in proposed § 2641.104, an individual becomes a ''former employee'' at the termination of Government service. Examples following the proposed definition of former employee illustrate the combined effect of this definition and those of ''employee,'' ''executive branch,'' and ''Government service.'' Notably, proposed example 3 emphasizes that former employee status is triggered when an employee terminates *Federal* service. Thus, the example points out that an individual who served in a GS–14 position did not become a former employee when he terminated service in the executive branch to accept a position in the legislative branch. This result is dictated by language in 18 U.S.C. 207(a)(1), (a)(2) and (b) indicating that those restrictions commence when ''service or employment with the United States'' terminates. In contrast, we indicate that status as a ''former senior employee'' or ''very senior employee'' is triggered (for purposes of sections 207(c), (d), and (f)) at the termination of service in a senior or very senior position. This distinction appears both in the proposed definition of ''former employee'' and in proposed definitions of ''former senior employee'' and ''former very senior employee.''

The proposed revised definition of ''senior employee'' at § 2641.104 reflects the post-Ethics Reform Act of 1989 amendment of 18 U.S.C. 207(c) by the Office of Government Ethics Authorization Act of 1996, Pub. L. 104–179. Prior to the amendment of section 207(c)(2)(A)(ii) by that Act, section 207(c) applied, *inter alia,* to employees occupying positions for which the rate of basic pay was equal to or greater than that payable for level V of the Executive Schedule (EL–V). The amendment replaced the EL–V threshold with the

rate of basic pay payable for level 5 of the Senior Executive Service (ES–5).

Proposed example 2 following § 2641.104 reflects our conclusion in OGE Informal Advisory Letter 92 x 20 that step increases, or their equivalent, must be considered in determining whether an employee's basic rate of pay equals or exceeds the threshold rate of basic pay. In a subsequent advisory letter, we observed that this interpretation is not limited to the SL (senior level) or ST (scientific or professional) positions that were the subject of OGE Informal Advisory Letter 92 x 20. In the subsequent advisory letter, we stated that ''[i]n general, for purposes of 18 U.S.C. 207(c)(2)(A)(ii), the ''rate of basic pay'' for any pay system refers to the base amount of actual pay for each individual employee, not the minimum rate of pay for a position's authorized pay range (footnote omitted).'' OGE Informal Advisory Letter 98 x 2. Both OGE advisory letters, along with the others cited in this rulemaking document, are included in *The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics,* as published by the U.S Government Printing Office, and are also available on OGE's Web site at *http://www.usoge.gov.*

Admirals and Generals in the uniformed services (''flag'' officers) are senior employees because, as specified in 18 U.S.C. 207(c)(2)(A)(iv), they are ''employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade is * * * pay grade O–7 or above.'' A flag officer becomes a senior employee once ''frocked.'' When frocked, an officer is authorized to wear the stars of the higher rank and to serve in a specified flag officer billet. He does not, however, receive the pay and allowances authorized by law for pay grade O–7 until he is actually promoted to that pay grade. We invite comment from the military departments concerning our interpretation of section 207(c) as it applies to flag officers.

As first published in part 2641 in early 1991, the term ''senior employee'' was defined to include individuals detailed to a position otherwise considered to be a senior employee position. We have revisited our earlier interpretation and propose to delete the reference to details. Our earlier interpretation was largely based upon a reading of 18 U.S.C. 207(g). Since that section indicates that an individual's former agency would include one to which the individual had been detailed, we stated in the regulation that a detail to a senior employee position would trigger senior employee status for purposes of determining the applicability of section 207(c). Upon further review of this issue, we now deem it more significant that the statute generally defines senior employee positions by reference to rate of pay (except in the case of Presidential or Vice Presidential appointments under title 3 of the United States Code). In the case of Senior Executive Service employees who are detailed, an employee continues to be the incumbent of the position from which detailed for purposes of pay and benefits. 5 CFR 317.903(a). Accordingly, we are proposing to delete the reference to details in existing § 2641.101 from our revised definition of senior employee in proposed § 2641.104. *Compare* OGE Informal Advisory Letter 98 x 4 in which we determined that an employee was a ''senior employee'' under 18 U.S.C. 207(c)(2)(A)(i) because she was, despite her election to continue to receive the SES pay of her previous position, employed in an Executive Schedule position.

For the reasons discussed above in connection with the definition of ''senior employee,'' the proposed definition in § 2641.104 of ''very senior employee'' differs from that previously published in part 2641 in relation to details. Separately, it should be noted that since the definition of ''very senior employee'' encompasses any employee who satisfies any of the criteria enumerated in proposed subparagraphs (1)–(4) of the definition, the definition may encompass an SGE. However, there is no provision exempting any former very senior employee from 18 U.S.C. 207(d) based upon length of service. *Compare* proposed definition of ''senior employee'' in § 2641.104.

Section 207(d) applies to, among others, any person who ''is employed in a position * * * *at* a rate of pay payable for level I of the Executive Schedule'' (emphasis added). Therefore, the current definition of ''very senior employee,'' found in existing section 2641.104, would be modified slightly in the proposed rule to reflect the apparent intent of Congress that the restriction apply to any individual employed in a level I position, or in a position in a pay system other than the Executive Schedule for which the rate of pay is exactly equal to—but not greater than—the level I rate. *See* Memorandum for Kenneth R. Schmalzbach, Assistant General Counsel, Department of the Treasury, from Daniel Koffsky, Acting, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of 18 U.S.C. § 207(d) to Certain Employees of the Treasury Department* (November 3, 2000), available under ''Other Ethics Guidance, Conflict of Interest Prosecution Surveys and OLC Opinions'' on OGE's Web site, *http://www.usoge.gov.* Proposed § 2641.104 reflects a similar Congressional judgment in relation to the application of section 207(d) to individuals serving in the Executive Office of the President.

The terms ''agency'' and ''department'' are used throughout 18 U.S.C. 207. The definitions of both terms in proposed § 2641.104, respectively, are from 18 U.S.C. 6. These terms appear in sections 207(a)(1) and 207(a)(2), for example, in connection with identifying those employees to and before whom communications and appearances may not be made. *See* proposed § 2641.201(f). They similarly identify the scope of the representational bars set forth in sections 207(c) and 207(d). *See* proposed § 2641.204(g). They are also used in 18 U.S.C. 207(f) for purposes of identifying the decisions of whom a former senior or very senior employee cannot seek to influence on behalf of a foreign entity. Significantly, these terms were not defined for purposes of identifying those former employees to whom the various restrictions of section 207 apply. We are proposing to include any ''independent agency'' not in the legislative or judicial branches within the scope of our definition of ''agency.''

Even the ''United States'' is a ''person'' as that term is defined in proposed § 2641.104; sections 207(a)(1), (a)(2), (b), (c), and (d), prohibit post-employment activity that is undertaken on behalf of (or to assist) ''any other person (except the United States).'' In some places in the proposed regulatory text, we use the terms ''person'' and ''entity'' together even though the first term encompasses the latter.

The terms ''agency ethics official'' and ''designated agency ethics official'' are defined due to their use in a number of places in the regulatory text, including in proposed § 2641.105 concerning advice, in proposed § 2641.301 concerning exceptions and waivers, and in proposed § 2641.302 concerning separate departmental or agency component designations for purposes of 18 U.S.C. 207(c).

Finally, as this regulation is intended to be gender-neutral, proposed § 2641.104 indicates that the terms ''he,'' ''his,'' and ''him'' include ''she,'' ''hers,'' and ''her,'' and vice versa.

Proposed § 2641.105—Advice

Proposed § 2641.105(a) indicates that current or former employees and others should seek advice concerning 18 U.S.C.

207 and part 2641 from an ''agency ethics official.'' The latter term is defined in proposed § 2641.104 as encompassing the designated agency ethics official (DAEO), the alternate DAEO, and any deputy ethics official as described in subpart B of 5 CFR part 2638. Proposed § 2641.105(a) notes that the agency in which the employee formerly served has the primary responsibility for providing such advice and that the agency may seek assistance from OGE. Proposed § 2641.105(a) does not require that agency advice be reduced to writing, although that format can provide the most protection to the employee. We expect that the decision whether to provide oral or written advice will be dictated by the circumstances.

An individual's former agency remains the primary source of advice. Agency officials are more familiar with agency programs and policies than are OGE personnel, and questions arising under section 207 often require a detailed understanding of the facts surrounding agency operations. However, OGE personnel also will provide advice to current or former employees, including their representatives or non-Federal employers, as outlined in proposed § 2641.105(b). Based on its statutory responsibilities for the executive branch ethics program, OGE may provide advice in a matter where an agency has already provided a former employee with advice.

While OGE strongly encourages agencies to establish mechanisms to ensure that departing employees will receive advice concerning pertinent post-employment restrictions (*see, e.g.,* 5 CFR 2638.203(b)(6) and (7)), this regulation as proposed would not require the agency to set up any particular system in order to achieve this goal. The Office of Government Ethics is aware that some agencies require that employees meet with an agency ethics official as one step in the exit process. Others have developed systems that identify terminating employees who can then be provided with written materials concerning the post-employment laws.

Although reliance on the oral or written advice of an agency ethics official or OGE is a factor that will be taken into consideration by the Department of Justice when selecting cases for prosecution, proposed § 2641.105(c) warns that there may be circumstances that would cause the Department to initiate a prosecution notwithstanding the former employee's reliance on such advice. The regulation would distinguish any case in which OGE issues a ''formal'' opinion. *See* 5 CFR 2638.309. Proposed § 2641.105(e) would advise that there is no attorney-client relationship formed when a current or former employee seeks advice from an agency attorney concerning post-employment restrictions. Thus, an agency or OGE attorney is obligated to report violations of law to appropriate authority. *See, e.g.,* 5 CFR 2635.101(b)(11).

Section 2641.105(d) of the proposed rule emphasizes that a former employee does not risk a violation of 18 U.S.C. 207 when he contacts an agency ethics official, attorney, or other Government employee for the purpose of seeking prospective advice concerning the potential applicability of the statute to his own post-employment activities.

Subpart B—Prohibitions

Proposed part 2641 draws heavily from the language and explanations in 5 CFR part 2637 concerning provisions of 18 U.S.C. 207 that were not amended by the Ethics Reform Act of 1989 (or thereafter). However, we have incorporated a number of improvements designed to facilitate understanding of this very complex statute. We have organized part 2641 as proposed in a manner that we feel more clearly highlights the applicability, duration, and elements of each of the substantive provisions of section 207 that apply to former employees of the executive branch and independent agencies. In addition, more guidance is included concerning the scope of the statutory exceptions.

We have also included new and more numerous examples. However, the examples are illustrative, not comprehensive. Each agency may provide additional illustration and guidance to its own employees, consistent with this part, in order to address specific problems arising in the context of a particular agency's operations. It is important to emphasize that the examples in part 2641 were drafted to illustrate the scope and meaning of 18 U.S.C. 207 only. Activity that is represented as permissible under section 207 may be prohibited by another post-employment law.

Proposed § 2641.201—18 U.S.C. 207(a)(1)

Section 207(a)(1) of title 18, United States Code, sets forth the permanent bar that was designated as section 207(a) in the pre-Ethics Reform Act of 1989 version of section 207. The target of this restriction is the former employee who participates personally and substantially in a particular matter involving a specific party or parties while employed by the Government and who later ''switches sides'' by representing another person on the same matter, with the intent to influence, before a Federal department, agency, or court.

Proposed § 2641.201(b) provides cross-references to the appropriate paragraphs of proposed § 2641.301 for each of the exceptions and waivers that in certain circumstances negate the prohibition contained in 18 U.S.C. 207(a)(1).

Proposed § 2641.201(d)—Communication or Appearance

Section 207(a) bars certain communications to or appearances before the United States. Proposed § 2641.201(d) describes the statutory communication or appearance element. Although section 207(a) has been amended several times since 1962—and the operative language describing the offense in section 207(a)(1) has varied—OGE and the Department of Justice have long held that it covers only those actions involving some representational contact by the former employee with the Government. *E.g.,* 2 Op. O.L.C. 313 (1978); OGE Informal Advisory Letter 82 x 13. The current statutory language reinforces the longstanding view that some communication or appearance by the former employee is required for a violation of the statute.

The definition of ''communication'' at proposed § 2641.201(d)(1) is intended to be all-inclusive with respect to types of communication, content of communication, or means of communication. This intentionally broad definition covers all formal or informal communications of any sort; to the extent that a given communication might be thought trivial or insignificant, such issues may be dealt with in connection with other statutory elements, especially the requirement that the communication be made with the intent to influence the Government. *See* proposed § 2641.201(e).

The definition of ''appearance'' at proposed § 2641.201(d)(2) largely follows the language of 5 CFR 2637.201(b)(3). However, the proposed regulation focuses solely on physical presence and omits the reference, found in § 2637.201(b)(3), to ''convey[ing] material to the United States in connection with a formal proceeding or application.'' The latter phrase is unnecessary, since the conveying of material, such as pleadings and other documents, typically would constitute a ''communication'' anyway. *See* 5 CFR 2637.201(b)(3) (example 1) (under old rule, appearance included submitting brief in agency proceeding). Under the

statute as it existed prior to the 1989 amendments, it was more important to distinguish appearances from mere communications, as the two types of contacts were treated differently for certain purposes that are no longer relevant under the current statutory scheme. *See* 44 **Federal Register** 19974, 19975 (April 3, 1979) (preamble to 5 CFR part 737, now 5 CFR part 2637); OGE Informal Advisory Letter 81 x 35.

Proposed § 2641.201(d)(3) emphasizes that section 207(a) does not prohibit ''behind-the-scenes assistance'' that involves no contact by the former employee with the Government. *See, e.g., Beverly Enterprises, Inc.* v. *Trump,* 182 F.3d 183, 191 (3d Cir. 1999), *cert. denied,* 120 S.Ct. 795 (2000). Proposed example 5 is derived from a recent opinion of the Office of Legal Counsel, and it illustrates the principle that a former employee does not confine herself to permissible behind-the-scenes activity when she conveys information to the Government through an intermediary and does so with the intent that the information be attributed to her. *See* Memorandum for Amy L. Comstock, Director, OGE, from Joseph R. Guerra, Deputy Assistant Attorney General, OLC, January 19, 2001, available under ''Other Ethics Guidance, Conflict of Interest Prosecution Surveys and OLC Opinions'' on OGE's Web site, *http://www.usoge.gov.* In this connection, see also proposed example 7 following proposed § 2641.201(f), which would illustrate the related point that a communication will be deemed to be made ''to'' an employee of the United States if it is conveyed to an employee through a third party with the intent that the information be attributed to the former employee.

Proposed § 2641.201(e)—With the Intent to Influence

Section 207(a) prohibits only those communications or appearances that are made with the intent to influence the United States. Proposed § 2641.201(e) describes this statutory element of intent to influence.

Prior to the 1989 amendments, the phrase ''with the intent to influence'' modified only ''communication,'' not ''appearance.'' See S. Rep. No. 170, 95th Cong., 1st Sess. 152–53 (1977); OGE Informal Advisory Letter 81 x 35.[3] After the 1989 Act, it became clear that both appearances and communications must be made with the intent to influence in order for a violation of section 207(a) to occur: ''Any person who * * * knowingly makes, with the intent to influence, any communication to or appearance before * * *.'' 18 U.S.C. 207(a)(1). (Identical language also appears in sections 207(a)(2), 207(c)(1), and 207(d)(1).) It is unclear, however, to what extent this 1989 change really altered the executive branch's understanding of section 207(a): ''appearance'' had been used in conjunction with the statutory phrase ''acts as agent or attorney for, or otherwise represents,'' and OGE had already determined that this meant an appearance was prohibited only ''if there were an actual or potential dispute.'' OGE Informal Advisory Letter 81 x 35. *See also* 5 CFR 2637.204(e), 2637.201(b)(5); 2 Op. Off. Legal Counsel 313, at 316. As discussed more fully below, the existence of an actual or potential dispute is one of the recognized factors for determining intent to influence. *Compare* 5 CFR 2637.204(e) (under old rule, same standard for ''acting as representative'' and ''attempting to influence'').

Proposed § 2641.201(e) uses basically the same test for the intent to influence as the prior section 207 regulations. *See* 5 CFR 2637.204(e). As articulated in the proposed regulation, the intent to influence may be found if the communication or appearance is made for either of the following purposes: ''(i) [s]eeking a Government ruling, benefit, approval, or other discretionary Government action; or (ii) [a]ffecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute.'' Proposed § 2641.201(e)(1)(i) and (ii). In some respects, paragraph (1)(i) might be viewed as a subset of subparagraph (1)(ii), in the sense that any time a communication or appearance is made to seek ''discretionary'' Government action, there is at least the potential for a conflict of positions or other dispute between the Government and the private party being represented. Nevertheless, consistent with the prior section 207 regulations, OGE believes that it is appropriate to emphasize that any representational contact made for the purpose of seeking discretionary Government action would meet the element of the intent to influence.

The proposed regulation draws on various provisions in the prior regulations, as well as more recent administrative and judicial precedents, to provide guidance on when the intent to influence is present. Proposed § 2641.204(e)(2) sets out situations that generally have been recognized as involving no intent to influence. Several of the paragraphs in proposed § 2641.201(e)(2) repeat provisions or examples found in the prior section 207 regulations and other OGE precedents. For example, proposed § 2641.201(e)(2)(iii)—signing a tax return prepared for another person—and § 2641.201(e)(2)(v)—submitting an SEC Form 10–K—basically reiterate examples found in 5 CFR 2737.204(e). Some provisions in the proposed regulation make certain clarifications to the language used in the prior section 207 regulations and other OGE precedents. For example, proposed § 2641.201(e)(2)(iv), read in conjunction with proposed § 2641.201(d) (example 4), substantially preserves 5 CFR 2637.204(g) (example 1), pertaining to various aspects of the Federal grant application process and service by former employees as principal investigators, but clarifies the rationale. The proposed rule intentionally does not carry forward the provision on project responses in 5 CFR 2637.201(b)(7) because this provision was thought by OGE to be susceptible to misinterpretation. In OGE's experience, the project response provision and the accompanying example sometimes have been construed as allowing former employees inappropriate latitude in communicating with the Government where there may be a potential for controversy in the course of performing Government contracts or submitting proposals or reports to the Government. In its place, OGE has provided example 5, following proposed § 2641.201(e)(2), in order to emphasize the limits on communications during the performance of contracts, particularly in the difficult area of contracts to perform professional or managerial studies or similar services for the Government. Proposed examples 3 and 7 also provide additional guidance concerning the scope of permissible contacts in connection with Government contracts.

Some of the situations addressed in proposed § 2641.201(e)(2) pertain to communications and appearances that involve certain types of factual statements or questions, *e.g.*, proposed § 2641.201(e)(2)(ii). OGE has long recognized that certain statements of fact, in appropriate circumstances, do not necessarily involve an intent to influence the United States. *See, e.g.*, OGE Informal Advisory Letter 80 x 9. Factual statements, however, are not *per se* excluded from section 207(a). Factual disputes often are the heart of a given controversy, and a former employee's

[3] The Senate Report discussion and OGE Informal Advisory Letter 81 x 35 specifically pertained to section 207(c), but they were relevant also to section 207(a), because ''[p]rior to the effective date of the amendments enacted by the Ethics Reform Act of 1989, both sections 207(a) and 207(c) contained identical language describing the nature of the representational activity prohibited.'' OGE Informal Advisory Letter 96 x 14, n. 25.

characterization of the material facts can be a form of advocacy. *See, e.g.*, proposed § 2641.201(e)(2) (example 4) (dealing with efforts to persuade Government of safety and efficacy of new drug based on presentation of testing data). Congress recognized this by providing exceptions to section 207, such as the exceptions for scientific or technological information and testimony under oath, which permit certain factual statements, but only under specified safeguards. *See* proposed § 2641.301(e) and (f). It is clear that factual statements may be made with the intent to influence the Government, if they are made for the purpose of seeking discretionary Government action or affecting Government action in connection with an issue or aspect of a matter involving an appreciable element of dispute. Therefore, OGE was careful, in various proposed textual provisions and examples pertaining to factual statements (or appearances in connection with factual matters), to include circumstances that specifically would indicate that there is no intent to influence.

A word of caution is in order with respect to the application of proposed § 2641.201(e)(1) and (2). The presence or absence of the intent to influence typically will be based on a consideration of all the relevant circumstances in a given case. The facts of each case should be examined carefully, therefore, before any conclusion is reached that a particular activity would fall within any of the provisions of proposed § 2641.201(e)(2) indicating no intent to influence, or would more correctly be viewed as meeting the test for the intent to influence in proposed § 2641.201(e)(1).

Proposed § 2641.201(e)(3) makes explicit a principle that was already implicit in the prior section 207 regulations. *See* § 2637.201(b)(5) (example 1). This provision recognizes that certain communications or appearances may commence without any intent to influence the Government, but may take on a different character if unforeseen disputes or other changed circumstances arise. In these cases, the former employee must refrain from any further communication or appearance if it becomes apparent that such further contact would be made with the intent to influence.

Proposed § 2641.201(e)(4) emphasizes that a mere appearance, even without any accompanying communication by the former employee, may be prohibited by section 207(a). As one court put it, applying the pre-1989 language, a representational appearance by a former employee may be covered ''with or without speaking for the client.'' *United States* v. *Coleman,* 805 F.2d 474, 480 (3d Cir. 1986).[4] Phrased another way, silent appearances can be made with the intent to influence. This conclusion is compelled by the language and history of the statute. The language of section 207(a)(1) explicitly covers former employees who make, ''with the intent to influence, any communication to *or* appearance before'' the Government (emphasis added). Historically, as discussed above, representational appearances actually were covered *per se,* even without any explicit requirement of ''intent to influence,'' although it was recognized even prior to the 1989 amendments that the appearance must have been made under circumstances involving ''at least inchoate adversariness.'' 2 Op. Off. Legal Counsel at 316. There is nothing in the legislative history of the 1989 Act to indicate that the addition of an explicit ''intent to influence'' element in connection with appearances was intended to relax the restriction on representational appearances as it had been understood previously.

The question becomes, then, what circumstances would indicate that physical presence alone, without any substantive communication, is intended to influence the Government? The second sentence of proposed § 2641.201(e)(4) provides a nonexhaustive list of factors that can be relevant to such determinations. Many of these factors are derived from judicial and administrative precedents. *See, e.g., Coleman, supra; United States* v. *Schaltenbrand,* 930 F.2d 1554 (11th Cir. 1991); OGE Informal Advisory Letter 82 x 7. Although no one factor is necessarily determinative, these and any other relevant factors should be considered in light of the totality of the circumstances in a given case.

Proposed § 2641.201(f)—To or Before an Employee of the United States

The post-Ethics Reform Act of 1989 version of 18 U.S.C. 207(a)(1) prohibits communications to or appearances before any ''officer or employee'' of any ''department, agency, court, or court-martial of the United States or the District of Columbia * * *.'' The prior version of the permanent bar had also prohibited communications to and appearances before ''any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof.'' We believe the current version of the permanent bar no longer lists ''civil, military, or naval commission'' because these commissions are encompassed within the remaining terms. For purposes of summarizing the section 207(a)(1) restriction as briefly as possible at proposed § 2641.201(a), we refer to an employee ''of the United States'' rather than repeating the words ''department, agency, court, or court-martial.'' Proposed § 2641.201(f) is titled accordingly. Although a court-martial is held under the auspices of a department, we chose to specifically list this forum in order to avoid possible confusion. Moreover, proposed § 2641.201(f) does not distinguish between ''department'' and ''agency,'' because the definition of ''agency'' includes ''department.'' *See* proposed § 2641.104.

The term ''employee of the United States'' is defined at proposed § 2641.201(f)(1) for purposes of identifying those individuals with whom post-employment contact is restricted. The proposed definition specifically includes an individual who, under 5 U.S.C. 3374(a), is considered an employee because appointed or detailed under the IPA. Pursuant to 18 U.S.C. 207(i)(1)(A), it also encompasses the President and the Vice President. Section 207(i)(1)(A) specifically states that ''the term ''officer or employee,'' when used to describe the person to whom a communication is made or before whom an appearance is made * * * shall include in subsections (a), (c), and (d), the President and the Vice President.''

More generally, the proposed definition of ''employee of the United States'' at § 2641.201(f)(1) includes any ''Federal employee'' who is ''employed by'' an agency, court, or court-martial. Our choice of words was guided by a number of factors. First, 18 U.S.C. 207(a)(1) states that a communication or appearance is barred only if directed to an ''employee'' of a department, agency, court, or court-martial. We specifically intend that the words ''employed by'' would exclude from the scope of section 207(a) those communications directed to a non-Federal employee who happens to be serving in a department, agency, court, or court-martial. However, as illustrated in proposed example 7 following § 2641.201(f), we recognize that there may be circumstances in which a communication to a non-Federal employee is actually directed to a Federal employee.

Proposed § 2641.201(f)(1)(i) specifies that an agency encompasses a Government corporation. While the

[4] *Coleman* involved the application of former 18 U.S.C. 207(b)(1), but that statute contained the same language concerning the representational conduct prohibited as section 207(a), prior to the 1989 amendments.

term agency encompasses any independent agency, proposed § 2641.201(f)(1)(ii) emphasizes that the representational bar extends to contacts with employees of an independent agency in any of the three branches of the Federal Government. Notably, proposed example 1 following § 2641.201(f) as proposed would highlight the fact that Members of Congress and their staffs are not employees of an independent agency in the legislative branch. Proposed § 2641.201(f)(1)(iii) modifies the term ''court'' with the adjective ''Federal'' in order to distinguish State or other non-Federal courts. Of course, as has been described in several OGE Informal Advisory Letters, a communication made in a court has ''the additional unavoidable intent of attempting to influence and to persuade'' a Federal party in the lawsuit, regardless of the forum. OGE Informal Advisory Letter 80 x 6. Moreover, a former employee may be prohibited from contacting Federal employees for use as witnesses or otherwise in connection with a lawsuit in State court. OGE Informal Advisory Letter 82 x 13.

Proposed § 2641.201(f)(1) omits the District of Columbia from the list of entities to or before which communications and appearances may not be made. As clarified in 18 U.S.C. 207(a)(3), the District of Columbia is listed in section 207(a)(1) merely as a consequence of the permanent bar's applicability to former District of Columbia employees. Thus, a former employee of the District of Columbia is covered by section 207(a)(1) in relation to contacts back to the government of the District of Columbia, but former employees of the executive branch (and of independent agencies) are not restricted by section 207(a)(1) from contacting employees of the District of Columbia.

Our definition of ''to or before'' in proposed § 2641.201(f)(2)(i) indicates that a communication or appearance will be considered directed to an employee of an agency, court, or court-martial even though not addressed to any particular employee of the entity. We believe it would be inconsistent with the purpose of 18 U.S.C. 207 to permit communications to a Federal entity merely because they are not addressed to a named individual.

In proposed § 2641.201(f)(2)(ii), we specify that a communication or appearance must be directed to an employee ''in his capacity as an employee of'' an agency, court, or court-martial. Proposed examples 2, 3, and 4 following proposed § 2641.201(f) are illustrative. While a former employee is not prohibited from lobbying a legislative branch employee at a meeting, example 2 emphasizes that a former employee may not try to influence an employee of an independent agency who is participating in the same meeting. Example 3 indicates that the permanent bar would extend to communications directed to an executive branch employee who is assigned by his agency to carry out official Government duties as a member of the Board of Directors of a non-Federal entity. The employee would be acting in his capacity as an executive branch employee even when, as in the proposed example, he is considering a specific issue of most interest to the private sector entity. (Separately, of course, the issue must be of direct and substantial interest to the current employee's agency, as described in proposed § 2641.201(j).) The proposed wording of § 2641.201(f)(2)(ii) is also intended to address the situation in which a former employee directs a communication to a former employee in a social setting. Although the current Federal Communications Commission (FCC) employee in proposed example 4 is ''off-duty'' at the cocktail party, the former employee nevertheless directs his communication to the FCC employee in his capacity as an employee of that agency.

As proposed, § 2641.201(f)(2)(ii) indicates that a former employee does not ''direct'' his communication to a mere bystander. Beyond this, we considered whether 18 U.S.C. 207(a)(1) should be interpreted as also not extending to a variety of situations in which a former employee directs a communication to a current employee who has no official role in a forum, yet who is participating in the forum as more than a mere bystander. We considered, for example, a number of situations in which a communication is directed to an assembled group. As we observed in OGE Informal Advisory Letter 81 x 5(1) in relation to the scope of section 207(c), the concern is the extent to which section 207 ''might require [a former employee] to survey who his audience was before he argued a certain position to any group of individuals.''

Proposed § 2641.201(f)(3) permits a former employee to serve as a speaker if the forum ''[i]s not sponsored or co-sponsored by an entity specified in paragraphs 2641.201(f)(1)(i)–(iv) of this section, [i]s attended by a large number of people, and [a] significant proportion of those attending are not employees of the United States.'' *See* OGE Informal Advisory Letters 81 x 5(1), 81 x 5(2), It is our intention that former employees not be prohibited from addressing what are essentially public forums. The regulation may depart somewhat from past guidance in that it states that employees otherwise permitted to address such fora may engage in debate with any other panel participants or with members of the audience who happen to be current employees without fear of being found to have made a prohibited communication. In a public setting outside the context of official decision-making, such incidental exchanges between participants are still primarily directed towards the audience.

Under proposed § 2641.201(f)(3), private sector sponsorship of a forum, standing alone, does not free a speaker or panel participant from his post-employment restrictions. The forum must be in the nature of a conference, seminar, or similar forum; the audience must be large; and a significant proportion of attendees must be persons other than Federal employees. We considered whether to specify a minimum number of attendees and/or a maximum percentage of Federal employee attendees. In some settings, a communication is directed to so wide an audience that it cannot be said to be made ''to'' Federal employees in the audience. And while some audiences will plainly fall on one side or the other of a line drawn for this purpose, a precise line as to the size and composition of such an audience cannot be drawn. Former employees should appreciate the risks of violating section 207 before agreeing to address a forum when it is unclear whether proposed § 2641.201(f)(3) applies. In this regard, former employees may be guided by the size of the conference and the proportion of non-employee attendees in proposed example 5.

The regulation would deal with published writings in a similar fashion. A former employee may ''permit the broadcast or publication of a commentary provided that it is broadcast or appears in a newspaper, periodical, or similar widely-available publication.''

As proposed example 7 would indicate, a communication can be made ''to'' an employee of the United States if it is conveyed through an intermediary with the intent that the information be attributed to the former employee. A similar point is discussed above in connection with proposed example 5 following § 2641.201(d) as proposed, which would illustrate the distinction between permissible behind-the-scenes activity and communications directed to the Government.

Proposed § 2641.201(g)—On Behalf of Any Other Person

Proposed § 2641.201(g) defines the phrase ''on behalf of'' for purposes of 18 U.S.C. 207(a)(1), (a)(2), (c) and (d). As enacted in 1962, the lifetime restriction originally barred a former employee from acting as ''agent or attorney'' for anyone. Similarly, the predecessor of current section 207(a)(2), concerning matters under an employee's official responsibility, originally barred a former employee from appearing personally as ''agent or attorney.'' These restrictions were amended by the Ethics in Government Act of 1978 to extend to the former employee who acts ''as agent or attorney for, or otherwise represents, any other person * * * in any formal or informal appearance * * * or * * * makes any oral or written communication on behalf of any other person.'' Congress used this same language in 1978 when it enacted section 207(c), the one-year ''cooling-off'' restriction applicable to former senior employees. Since the Ethics Reform Act of 1989, these three restrictions have barred a former employee from making any ''communication to or appearance before'' an employee of the United States ''on behalf of'' any other person. The same language appears in section 207(d), the one-year cooling-off restriction applicable to former very senior employees.

We determined that a communication or appearance that is in the interest of another person is not sufficient to be considered ''on behalf of'' that person. Accordingly, the proposed definition at § 2641.201(g)(1) states that ''[a] former employee does not act on behalf of another merely because his communication or appearance is consistent with the interests of the other person, is in support of the other person, or may cause the other person to derive a benefit as a consequence of the former employee's activity.'' While we recognize that the terms ''agent'' and ''attorney'' no longer appear in the current version of the permanent, two-year, or one-year cooling-off restrictions, proposed § 2641.201(g)(1) indicates that when a former employee acts as another's ''agent'' or ''attorney,'' he necessarily acts on behalf of the principal. Even when a former employee is not acting as an agent or attorney, however, proposed § 2641.201(g)(1) recognizes that a former employee may nevertheless act on behalf of another provided the criteria at proposed § 2641.201(g)(1)(i) and (ii) are satisfied. As specified in proposed § 2641.201(g)(1)(i), the former employee must be acting with the consent, express or implied, of the other person. And, as specified in proposed § 2641.201(g)(1)(ii), the former employee must be subject to some degree of *control or direction* by the other person in relation to the communication or appearance.

The former employee in example 2 following proposed § 2641.201(g) has broad authority to further the interest of the organization with which she is serving as a volunteer. For purposes of the consent requirement in proposed § 2641.201(g)(1)(i), the organization is deemed to have consented to her dispatch of the letter to the Government. In contrast, the circumstances in proposed example 3 would indicate that the former employee is not acting on behalf of the nonprofit group with which he is serving as an employee.

OGE has fielded many questions from agencies that wish to contact former employees who have gone to work for private sector employers. We have generally been counseling that all relevant factors must be considered, including the relationship between the communication or appearance and any related interest of the former employee's new employer or other organization with which he is affiliated. *See, e.g.,* OGE Informal Advisory Letter 97 x 9. We believe that the focus on the two factors at proposed § 2641.201(g)(1) would make certain contacts between an agency and its former employee less problematic and would allow OGE and agency ethics officials to advise accordingly.

An appearance or communication is barred by 18 U.S.C. 207(a)(1), (a)(2), (c), or (d) only if made on behalf of ''any other person.'' Proposed § 2641.201(g)(2) cross-references the definition of ''person'' in proposed § 2641.104, but specifically states that self-representation is not prohibited. Proposed example 1 following proposed § 2641.201(g) is illustrative. Proposed § 2641.201(g)(2) also includes a reference to sole proprietorships that is intended to distinguish that form of business enterprise from partnerships and corporations for purposes of the ''exception'' for self-representation. The proposed rule reflects that a corporation is a person separate from its owner or owners. As a result, if a former employee chooses to incorporate his consulting business, he must ensure that his communications with the Government do not run afoul of the post-employment statute's requirements since he will be representing another ''person.'' On the other hand, if the same former employee had chosen not to incorporate his business, he would be free to interact with current Government employees without fear of violating section 207(a)(1) since he would be representing only himself.

Proposed § 2641.201(h)—Particular Matter Involving Specific Parties

Proposed § 2641.201(h) explains a concept that has been central to the understanding of 18 U.S.C. 207 since its original enactment in 1962. The phrase ''particular matter'' is broadly defined in section 207(i)(3) to include ''any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.'' In section 207(a)(1) and (2), however, particular matter is modified by the additional phrase ''which involved a specific party or specific parties.'' *See* B. Manning, *Federal Conflict of Interest Law* 204 (1964) (explaining significance of the phrase); 2 Op. O.L.C. 151 (1978) (same). Proposed § 2641.201(h) is intended to explain the nature and scope of this statutory element.

The proposed regulation uses basically the same test for particular matters involving specific parties that is used in 5 CFR 2637.201(c). Proposed § 2641.201(h)(1) states: ''These matters involve a specific activity or undertaking affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.'' One minor change worth noting is that the proposed regulation speaks of ''identified'' parties, whereas section 2637.201(c)(1) used the term ''identifiable'' parties (following identical language originally found in B. Manning, *supra,* at 204). This change is consistent with the more recent definition of particular matter involving specific parties in 5 CFR 2640.102(l). *See* 60 FR 47207, 47211 n.1 (September 11, 1995). The use of ''identified,'' rather than ''identifiable,'' is intended to distinguish more clearly between particular matters involving specific parties and mere ''particular matters,'' which are described elsewhere as including matters of general applicability that focus ''on the interests of a discrete and *identifiable* class of persons'' but do not involve specific parties. 5 CFR 2640.102(m) (emphasis added). *See also* 5 CFR 2640.103(a)(1); 5 CFR 2635.402(b)(3). The use of the term ''identified,'' however, does not mean that a matter will lack specific parties just because the name of a party is not disclosed to the Government, as

where an agent represents an unnamed principal.

Consistent with this basic test and with § 2637.201(c)(1), proposed § 2641.201(h)(2) confirms that matters of general applicability are not particular matters involving specific parties. *See also Shakeproof Indus. Prod. Div. of Ill. Tool Works, Inc.* v. *Department of Commerce,* 104 F.3d 1309, 1313–14 (Fed. Cir. 1997). As illustrated by the examples following this provision, section 207(a) ordinarily does not prohibit former employees from making representations in connection with general rulemaking, policy and legislative matters, notwithstanding any personal and substantial participation or official responsibility they may have had with respect to such matters as a Federal employee.

Proposed § 2641.201(h)(3) indicates that specific parties must be involved, under section 207(a), both at the time the former employee was involved in the matter and at the time of the post-employment representation. This reflects a longstanding interpretation of section 207(a), which was codified in 5 CFR 2637.201(c)(4). Nevertheless, the Ethics Reform Act of 1989 made certain adjustments to the grammatical structure of section 207(a) that may require some explanation. Prior to the 1989 Act, section 207(a) read, in pertinent part: ''Whoever * * * knowingly acts as agent or attorney for, or otherwise represents, any other person * * * in connection with any * * * particular matter involving specific parties * * * in which he participated personally and substantially as an officer or employee * * *.'' In 1989, the language pertaining to specific parties was broken out and moved to its own lettered subparagraph, which now reads: ''(C) which involved a specific party or specific parties *at the time of such participation.*'' 18 U.S.C. 207(a)(1)(c) (emphasis added).[5] Based on the legislative history, it appears that the amendment was intended simply to resolve any doubt that specific parties must have been involved at the time that the former employee participated in the matter, not to cast doubt on the well-understood requirement that specific parties must be involved at the time of the representation.[6]

Proposed § 2641.201(h)(4) pertains to the related issue of when specific parties can be said to be involved in a particular matter. Section 207(a) can apply to participation in preliminary or informal stages of a particular matter. *See, e.g.*, 2 Op. O.L.C. 313 (1978). Consequently it becomes important to determine, in light of the facts surrounding a given matter, at what point specific parties are first identified. Proposed § 2641.201(h)(4) and the examples that follow are intended to provide guidance in making such determinations. In addition to general guidance applicable to all types of matters, the proposed regulation also provides more specific guidance with respect to contracts, grants, and other agreements, which historically have posed some of the most difficult and recurring questions. *See* OGE Informal Advisory Letter 96 × 21.

Another set of difficult and recurring questions is addressed by proposed § 2641.201(h)(5), which explains the requirement that the same particular matter must be involved both at the time of the former employee's Government service and at the time of post-employment representation. The proposed regulation uses substantially the same test as 5 CFR 2637.201(c)(4), including a similar list of factors that should be taken into consideration, where relevant, in determinations as to whether two matters constitute the same particular matter involving specific parties. The proposed examples following proposed § 2641.201(h)(5) would illustrate the application of some of these factors and draw on various administrative and judicial precedents. *E.g., United States* v. *Medico Indus., Inc.,* 784 F.2d 840 (7th Cir. 1986); *CACI, Inc.-Federal* v. *United States,* 719 F.2d 1567 (Fed. Cir. 1983); OGE Informal Advisory Letter 93 × 32. For purposes of clarity, one factor was not carried over from the previous list in § 2637.201(c)(4), namely, ''the continuing existence of an important Federal interest''; this factor was thought to add little to the analysis of section 207, since the statute already applies only to matters in which the United States is a party or at least has a ''direct and substantial interest.'' 18 U.S.C. 207(a)(1), (a)(2).

The principle reflected in proposed § 2641.105—that the primary responsibility for rendering post-employment advice resides in the ethics official at the agency where the former employee served—is particularly important in connection with these ''same particular matter'' determinations. These questions frequently require an understanding of the specific operations, programs, and missions of the agencies involved. Moreover, there is judicial recognition that agency determinations with respect to the ''same particular matter'' element are ''entitled to weight.'' *CACI,* 719 F.2d at 1576; *see also Shakeproof,* 104 F.3d at 1314. This is not to suggest, of course, that deference to the agency is absolute. See, *e.g., United States* v. *Gonzalez-Florido,* 986 F.Supp. 687 (D.P.R. 1997).

Proposed § 2641.201(i)—Participated Personally and Substantially

Proposed § 2641.201(i) defines the terms ''participate,'' ''personally,'' and ''substantially.'' The first regulatory definition of these terms for purposes of 18 U.S.C. 207 was published in 1980 at 5 CFR 2637.201(d). When Congress amended section 207 in 1989, it added a statutory definition of ''participated'' at section 207(i)(2). In the 1990s, OGE published regulatory guidance concerning the meaning of these terms in connection with its implementation of 18 U.S.C. 208 at 5 CFR part 2635 and 5 CFR part 2640. The current definitions of ''personal and substantial'' at 5 CFR 2635.401(b)(4) and ''personal and substantial participation'' at 5 CFR 2640.103(a)(2) were patterned closely after definitions in 5 CFR part 2637. The language of proposed § 2641.201(i) deviates somewhat from the language of these existing OGE regulations for several reasons. First, we are proposing to more clearly separate the definitions of the terms ''participate,'' ''personally,'' and ''substantially.'' We would also exactly track the language of the

[5] Similar language was enacted in 1989 in section 207(a)(2)(C), which pertains to particular matters pending under an employee's official responsibility: ''(C) which involved a specific party or specific parties *at the time it was so pending* (emphasis added).''

[6] The leading Senate proponent of the 1989 amendments stated that many of the changes to section 207 ''simply reflect an effort to make the statute more readable.'' 135 Cong. Rec. S15954 (November 17, 1989) (remarks of Sen. Levin). Senator Levin also entered into the record a section-by-section analysis stating that section 207(a)(1) is ''similar to current law'' and describing it as a prohibition against ''lobbying * * * on a particular matter involving specific parties,'' *id.,* which suggests this was not a novel effort to cover matters that do not involve specific parties at the time of the lobbying. Furthermore, the Department of Justice testified at a 1989 hearing with respect to H.R. 9, which contained the same language as the enacted amendments concerning the timing of the specific parties requirement. The Justice Department commented on this aspect of the proposal and specifically noted its consistency with the OGE regulation discussed above: ''The requirement that a specific party must have been involved at the time of the employee's government service clarifies present law in a way that is consistent with current regulations. It means, for example, that a Government employee who helped develop a set of regulations or policies is not precluded from becoming involved in a particular case or matter involving the application of the regulation or policy. See 5 CFR 737.5 (c)[now 5 CFR 2637.201(c)].'' Hearings Before the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, House of Representatives, on H.R. 2267 and Related Bills: Post-Employment Restrictions Act of 1989, 101st Cong., 1st Sess. 151 (April 27, 1989)(statement of John C. Keeney, Deputy Assistant Attorney General, Criminal Division).

statutory definition of ''participated.'' More significantly, however, we are proposing to include some additional guidance that reflects our experience with several questions arising since publication of the earlier regulations.

The first sentence of the definition of ''participate'' at proposed § 2641.201(i)(1) is from 18 U.S.C. 207(i)(2). Consistent with existing guidance at 5 CFR 2637.201(d)(3), the definition then indicates that to participate can also mean to ''purposefully forbear in order to affect the outcome of a matter.'' The proposed definition also distinguishes participation from mere knowledge of a matter and from the definition of ''official responsibility'' as set forth in proposed § 2641.202(j). Additionally, the proposed definition points out that an employee can participate in a particular matter even though it is not pending at his own agency. Finally, it would state that an employee does not participate in a particular matter within the meaning of section 207(a)(1) unless he does so in his official capacity.

Under the proposed definition at § 2641.201(i)(2), to participate ''personally'' includes the direct and active supervision of others. The existing regulations refer to active supervision of a ''subordinate.'' As proposed, § 2641.201(i)(2) indicates that the person supervised need not technically be a subordinate. An employee may participate in a matter, for example, by means of direct and active supervision of an employee who is merely on loan from another office. Separately, we are also proposing to make the fairly obvious point that an employee participates in a matter whether he does so ''individually or in combination with other persons.''

The definition of ''substantially'' at proposed § 2641.201(i)(3) closely tracks the definitions of that term in 5 CFR part 2635 and 5 CFR part 2640. However, we are proposing to insert an additional sentence in response to two recent scenarios. The first concerned a former employee's involvement as a Government employee in a meeting with a private sector company. The meeting was preliminary to the company's submission of an application to the Government. The former employee was willing to concede that the meeting and the application were the same ''particular matter.'' He argued, however, that the meeting constituted an aspect of the matter that was insignificant in relation to the application process as a whole and that the former employee's participation was, therefore, insubstantial. In another case, a former employee argued that his participation in a multi-million dollar project had not been substantial since the dollar value of the aspect of the project in which he was involved was insignificant in relation to the dollar value of the project as a whole. The Office of Government Ethics rejected both arguments, noting that in both cases the former employee had made a substantive contribution to the matter. As we propose to explain in § 2641.201(i), ''[p]rovided that an employee participates in the substantive merits of a matter, his participation may be substantial even though his role in the matter, or the aspect of the matter in which he is participating, may be minor in relation to the matter as a whole.''

We have included an additional sentence in the definition at proposed § 2641.201(i)(3) emphasizing that participation in ''peripheral'' aspects of a matter or in aspects not directly involving the substantive merits of a matter is not substantial. We would note, however, that such an aspect might itself constitute a particular matter with respect to which the permanent bar might apply. This is set forth in 5 CFR 2637.201(d)(2) and example 1 following 5 CFR 2637.201(d)(1).

Although reworded, proposed examples 1 and 2 following proposed § 2641.201(i) are from existing 5 CFR 2637.201(c) and 2637.201(d). Proposed example 3 would make the point that an employee's participation may be substantial even though her role in the matter may be minor in relation to the matter as a whole.

Proposed § 2641.201(j)—United States is a Party or Has a Direct and Substantial Interest

Finally, proposed § 2641.201(j) focuses on how to determine whether the United States is a party or has a direct and substantial interest in a particular matter at the time of a former employee's post-employment representational activity.

The definition of ''United States'' at proposed § 2641.201(j)(1) is intended to encompass the entire Federal Government. As explained earlier in connection with the definitions in proposed § 2641.104, we cited the definition of ''Government corporation'' in 18 U.S.C. 6 for purposes of defining ''United States'' in proposed § 2641.201(j)(1). Also, as explained below in connection with proposed § 2641.301(a), the Government of the District of Columbia is not encompassed by the term United States. Separately, we note that the proposed definition of United States at § 2641.201(j)(1) encompasses the entire judicial branch. *Compare* proposed § 2641.201(f) which provides that a representation is not made ''to'' an employee of the United States unless made, *inter alia,* to an employee of a Federal *court.* The narrower interpretation in proposed § 2641.201(f) reflects the statutory language ''department, agency, court, or court-martial of the United States'' in 18 U.S.C. 207(a).

Proposed § 2641.201(j)(2) specifically states that ''the United States is neither a party to nor does it have a direct and substantial interest in a particular matter merely because a Federal statute is at issue or a Federal court is serving as the forum for resolution of the matter.'' *See, e.g.*, 14 Op. Off. Legal Counsel O.L.C. 139 (June 7, 1990) (predecessors to 18 U.S.C. 207(a)(1) and (a)(2) determined not to bar former employees from serving as trustees in bankruptcy cases unless the United States is a party or has a direct and substantial interest in the bankruptcy proceeding, *e.g.*, if the United States is a creditor of the estate.) Of course, when a former employee wishes to participate in a judicial proceeding concerning the same particular matter with which he was involved while a Government employee, it is likely that his former agency will be a party to or have a direct and substantial interest in the subject of the proceeding or that the agency will itself be serving as the forum.

As OGE has noted in relation to 18 U.S.C. 205, determining whether or not the United States has a direct and substantial interest in a particular matter ''may not be easy.'' OGE Informal Advisory Letter 94 × 7. Proposed § 2641.201(j)(2)(i) assigns the primary responsibility for coordinating this determination to the designated agency ethics official at the former employee's agency. This assignment is consistent with the DAEO's responsibility, as specified in proposed § 2641.105(a), to provide advice to a former employee of his agency or to the individual's representative. If any agency has a continuing direct and substantial interest in a matter, we suggest that it will most likely be the agency in which the matter was pending when the former employee worked on it as a Government employee. If the circumstances suggest that another agency may have a direct and substantial interest in the matter, the DAEO should contact an agency ethics official at the other agency. Moreover, we anticipate that an agency's ethics staff will need only pursue resolution of a direct and substantial interest issue when all other elements of 18 U.S.C. 207(a)(1) or 207(a)(2) appear satisfied.

As proposed, the regulation does not establish any procedures for the internal coordination of an agency's direct and substantial interest determination. Under proposed § 2641.201(j)(2)(i), it is within an agency's discretion to determine who must be consulted within the agency (or any department of which the agency is a part) in order to determine whether the agency will assert a direct and substantial interest in a particular matter. A DAEO may accept the assurance of another agency's DAEO (or equivalent official in the legislative or judicial branch) that he has been authorized by competent agency authority to convey the agency's direct and substantial interest determination.

In making this determination, proposed § 2641.201(j)(2)(ii) provides that appropriate officials shall consider ''all relevant factors.'' Thus, the proposed factors listed in § 2641.201(j)(2)(ii)(A)-(D) are not all-inclusive. We specifically seek public comment concerning useful revisions or additions to our proposed list.

Proposed § 2641.202—18 U.S.C. 207(a)(2)

All relevant statutory changes that were made to 18 U.S.C. 207(a)(1) by the Ethics Reform Act of 1989 were also made to section 207(a)(2), formerly section 207(b)(i), a two-year bar which similarly applies to all ''former employees.'' Proposed § 2641.202(b) provides cross-references to the appropriate paragraphs of proposed § 2641.301 for each of the exceptions and waivers that in certain circumstances negate the prohibition contained in section 207(a)(2). As sections 207(a)(1) and (a)(2) are identical except for their duration and the degree of involvement in a particular matter during Government service necessary to trigger the restriction, proposed § 2641.202(d)–(i) cross-reference relevant portions of proposed § 2641.201 relating to the permanent bar.

Proposed § 2641.201(j)—Official Responsibility

The first sentence of the definition of ''official responsibility'' in proposed § 2641.202(j)(1) quotes the statutory definition of the term in 18 U.S.C. 202(b). In addition, consistent with existing guidance at 5 CFR 2637.202, proposed § 2641.202(j)(1) explains that the scope of an employee's official responsibility is ordinarily determined by statute, regulation, Executive order, job description, or delegation of authority. Example 1 following proposed § 2641.202(j) emphasizes that subject matter jurisdiction assigned by position description is not removed from the scope of an employee's official responsibilities merely because the employee does not actually exercise his authority to direct Government action in that subject area.

Proposed § 2641.202(j)(1), drawing from existing 5 CFR 2637.202(b)(2), emphasizes the potential breadth of the term ''official responsibility,'' noting that ''[a]ll particular matters under consideration in an agency are under the official responsibility of the agency head and each is under that of any intermediate supervisor who supervises a person, including a subordinate, who actually participates in the matter *or who has been assigned to participate in the matter* within the scope of his duties'' (emphasis added). The highlighted language is new. It is intended to make clear that a supervisor can have official responsibility for a pending matter even though his subordinate has not yet retrieved the assigned matter from his in-box or, although having retrieved it, has not yet worked on it ''personally and substantially.'' This language would also make it clear that a supervisor need not have personally assigned the matter to the subordinate, provided the matter is pending with the subordinate and it falls within the scope of the subordinate's official duties. Proposed example 3 would emphasize the requirement that the assigned matter fall within the scope of the supervised employee's official duties. On the other hand, the proposed language is intended to indicate that an employee can have official responsibility for a matter even though he exercises only nominal supervision over the person actually doing the work; the supervised employee need not be a true subordinate. Thus, for example, OGE has advised that a former employee had official responsibility for a matter even though all work on a project was being accomplished by employees ''on loan'' from another office.

As drafted, proposed § 2641.202(j) indicates that a nonsupervisory subordinate is not deemed to have official responsibility for a matter to which he has been assigned, whether or not he has begun to work on it. *But see United States* v. *Coleman,* 805 F.2d 474 (3d Cir. 1986) (affirming conviction of nonsupervisory employee for violation of 18 U.S.C. 207(b)(i), the predecessor to section 207(a)(2).) Proposed example 4 following proposed § 2641.202(j) emphasizes, however, that the nature of a nonsupervisory employee's participation in a particular matter could potentially make her subject to the permanent section 207(a)(1) bar as to that matter.

Existing 5 CFR 2637.202(b)(3) provides that authority for an ''ancillary'' consideration does not constitute responsibility for the particular matter as a whole. As proposed, § 2641.202(j)(1) continues to make the point that responsibility for ancillary matters, such as budgeting, or equal employment considerations, does not constitute official responsibility for the whole of a matter. Proposed example 2 following § 2641.202(j) illustrates this point. The proposed guidance makes the additional point that responsibility for nonsubstantive aspects of a matter similarly does not cause an employee's official responsibility to extend to the whole of a substantive matter.

Guidance in proposed § 2641.202(j)(2) concerning the meaning of ''actually pending'' also derives from existing guidance in 5 CFR 2637.202. New language clarifies that a supervisory employee acquires official responsibility for a matter as soon as it is referred to him for assignment, regardless of whether he subsequently assigns the matter to another employee or retains it for his own action. Thus, proposed § 2641.202(j)(2) provides that a supervisory employee acquires official responsibility for any matter referred to the employee ''for assignment.'' In proposed example 5, the General Counsel is said to have acquired official responsibility for a certain matter as soon as it was referred to him as an issue requiring action by the legal department. In addition, as already noted, the proposed guidance notes that there is no requirement that a matter have been pending under an individual's official responsibility for any particular length of time. *See, e.g.*, OGE Informal Advisory Letter 94 x 13. In proposed example 5, therefore, it would be enough that the particular matter had been pending under the General Counsel's official responsibility for 2 days. Proposed § 2641.202(j)(2) also indicates that a matter remains pending when it is not under ''active'' consideration, as discussed in OGE Informal Advisory Letter 85 x 6. Proposed example 6 is a reworded version of the current example following 5 CFR 2637.202(c).

Proposed § 2641.202(j)(3) addresses the applicability of section 207(a)(2) with respect to particular matters that fell within an employee's official responsibility only by virtue of a temporary assignment to a position. We recognize that while on detail or serving in an acting capacity, a temporary supervisor can potentially establish

policies, gain information, decide issues, and make contacts that may serve him well in his post-Government life. On the other hand, in proposing this regulatory provision, we sought to balance the concerns underlying section 207(a)(2) against the likelihood that a temporary assignment would permit an employee to acquire the knowledge and experience necessary to make those concerns legitimate. Such assignments occur frequently throughout the executive branch, sometimes lasting only a few days or otherwise involving circumstances indicating that the employee had no reasonable expectation of being able to exercise the full authority of the position. In many cases, where the employee functions only in a limited ''caretaker'' role, it seems remote that the policy concerns underlying section 207(a)(2) would be implicated. Although we were unable to establish a bright line test for determining when temporary duties implicate section 207(a)(2), we are proposing a nonexclusive list of factors that agencies can utilize in making such determinations, as set out in proposed § 2641.202(j)(3)(i)–(iv).

Proposed § 2641.202(j)(4) indicates that ''[t]he scope of an employee's official responsibility is not affected by annual leave, terminal leave, sick leave, excused absence, leave without pay, or similar absence from assigned duties.'' Related § 2641.202(j)(5) as proposed would state that ''[o]fficial responsibility for a matter is not eliminated through self-disqualification or avoidance of personal participation in a matter * * *.'' Thus, a matter is not removed from an employee's official responsibility when he recuses himself from participation in the matter due to a conflicting financial or personal interest or during a job search as required by subparts D, E, and F of 5 CFR part 2635 and 5 CFR part 2640. Example 8 following proposed § 2641.202(j) is illustrative. This interpretation is consistent with *United States* v. *Dorfman* 542 F. Supp. 402 (N.D. Ill. 1982), in which the court advised that a U.S. Attorney's recusal coupled with assignment of a particular matter to a ''first assistant'' would not remove the case from the U.S. Attorney's official responsibility. The court cited 5 CFR 737.7 (now 5 CFR 2637.202(b)(5)), a provision which was also the subject of OGE Informal Advisory Letter 86 x 2. As interpreted by OGE in that advisory letter, a contract could be removed from an employee's official responsibility if he had ''not only the contract but also the actual function dealing with the contract removed from his duties under his position description.'' Proposed § 2641.202(j)(5)) recognizes that the scope of an employee's official responsibility may be changed by an amendment of a position description.

Proposed § 2641.202(j)(6) does not explicitly address the scope of the term ''official responsibility'' in the case of an employee whose Government service lasted less than one year and was preceded by a break in Government service. However, proposed example 9 does provide our interpretation of the application of section 207(a)(2) where there has been a break in service in the last year of the former employee's Government service. By way of background, this issue was brought to our attention when a former high-ranking employee, after a break in service lasting a few months, agreed to serve as an SGE for a short period of time. When he left Government the second time, less than one year had passed since serving in his previous Government job. We noted that an initial section 207(a)(2) bar would have commenced at the end of his first period of Government service. The issue was whether the section 207(a)(2) bar triggered by his second departure from Government should apply to particular matters for which he had responsibility during his first period of service (provided they were actually pending within the one-year period prior to his termination from his second Government job.) We determined that the second section 207(a)(2) restriction applied only to those particular matters that were actually pending under his official responsibility during his most recent period of Government service. (Of course, any section 207(a)(2) restriction remaining from the employee's termination from Government service immediately preceding the break in service would still be in effect.)

Section 207(a)(2) also requires that the particular matter be one that the former employee ''knows or reasonably should know'' was pending under his official responsibility during his last year of Government service. As described in existing part 2637, section 207(a)(2) had been interpreted to mean that the restriction would not apply to a former employee ''unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility.'' The proposed new guidance similarly provides that it is the former employee's knowledge at the time of the post-employment representation that is critical. Thus, the last sentence of proposed § 2641.202(j)(7) notes that ''[i]t is not necessary that a former employee have known during his Government service that the matter was actually pending under his official responsibility.''

Proposed § 2641.202(j)(7) makes it clear that it is enough that the former employee ''reasonably should know'' at the time of his post-employment representation that the matter was actually pending under his official responsibility within his last year of Government service. We are proposing to include a note following § 2641.202(j) of the new regulation that would warn an employee that prudence dictates that he make inquiry ''when the facts suggest that a particular matter involving specific parties *could* have been actually pending under his official responsibility'' (emphasis added). The proposed note cross-references the provision in proposed § 2641.105(d) stating that an employee will not be deemed to violate section 207 when he contacts an employee of the United States for purposes of determining the applicability or meaning of section 207 as applied to his own activities.

Proposed § 2641.203—18 U.S.C. 207(b)

Pursuant to 18 U.S.C. 207(b), a former employee may not utilize specified nonpublic information to assist another person in relation to certain ongoing trade or treaty negotiations in which the former employee participated personally and substantially during his last year of Government service. The prohibition lasts for one year or until the termination of the negotiation, whichever occurs first. Enacted by the Ethics Reform Act of 1989 to protect sensitive Government information relating to certain trade or treaty negotiations, section 207(b) represents a significant departure from the earlier post-employment restrictions of section 207 since, like section 207(f) discussed below, it extends to ''behind-the-scenes'' assistance.

While OGE intends to publish comprehensive regulatory guidance concerning 18 U.S.C. 207(b), § 2641.203 of this proposed rule includes only a brief introductory summary of the restriction and paragraphs concerning applicable exceptions and waivers, and the commencement and duration of the restriction. We have reserved § 2641.203(d)–(i) for additional guidance.

To date, OGE's written guidance relating to 18 U.S.C. 207(b) remains the interpretation of the restriction that was distributed by means of a memorandum dated October 26, 1990, which was published as OGE Informal Advisory Letter 90 x 17. OGE reissued updated

versions of the memorandum on November 5, 1992 and again on February 17, 2000, by a Memorandum to Designated Agency Ethics Officials, General Counsels, and Inspectors General. Although the 1992 and 2000 memoranda incorporate a few substantive changes, none affects our original 1990 summary of section 207(b). The February 2000 updated summary is available on our Web site under ''DAEOgrams,'' at *http://www.usoge.gov.*

Proposed § 2641.204—18 U.S.C. 207(c)

Section 207(c) of title 18, United States Code, is the one-year ''cooling-off'' restriction that prohibits a former ''senior employee'' from communicating to or appearing before his former agency, on behalf of another person, with the intent to influence official action. The statutory language of section 207(c) was substantially revised by the Ethics Reform Act of 1989. As noted earlier, OGE published interim regulatory guidance in February 1991 at part 2641 concerning section 207(c) as amended by the Ethics Reform Act of 1989. That rule set forth several definitions in connection with the establishment of interim procedures for the granting of exemptions and designation of components for purposes of section 207(c). As discussed above, in connection with proposed section 2641.104, we are proposing to make certain changes to the interim definitions in existing part 2641. (Our proposed changes to the existing exemption and component designation procedures at 5 CFR 2641.201(d) and (e) are discussed further below in connection with renumbered proposed §§ 2641.301(j) and 2641.302.)

Proposed § 2641.204(a) confirms that an executive branch employee can be subject to either 18 U.S.C. 207(c) or 207(d) but not both. Like section 207(d), section 207(c) states that the restriction applies ''[i]n addition to the restrictions set forth in subsections (a) and (b).'' Moreover, section 207(c)(2)(A) states that the section 207(c) bar ''shall apply to a person (other than a person subject to the restrictions of subsection (d)) * * *.'' Accordingly, § 2641.204(a) as proposed would specifically provide that a former ''very senior employee'' is subject to the one-year cooling-off restriction set forth in section 207(d) in lieu of that set forth in section 207(c).

Proposed § 2641.204(b) provides cross-references to the appropriate paragraphs of proposed § 2641.301 for the exemption, exceptions, and waivers that in certain circumstances would negate the prohibition contained in 18 U.S.C. 207(c).

Proposed § 2641.204(c)(1) concerns the application of 18 U.S.C. 207(c) to special Government employees (SGEs). Since its enactment in 1978, section 207(c) has not applied to an SGE who served the Government fewer than 60 days during a statutorily specified time frame. As revised by the Ethics Reform Act of 1989, the current language of the statute provides that the one-year cooling-off period ''shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.'' Proposed renumbered § 2641.204(c)(1) confirms that the ''60 days'' refers to the number of days in which an employee served as an SGE and not to the number of days in which he served as a senior employee.

We are proposing to include a sentence in § 2641.204(c)(1) which addresses the manner in which the 60-day period should be computed for purposes of determining the applicability of section 207(c) to a former senior SGE. Guidance concerning the counting of days in connection with the service of SGEs was contained in the former Federal Personnel Manual and has been endorsed in OGE informal advisory letters and OLC opinions. Consistent with that guidance, § 2641.204(c)(1) as proposed would state that ''[a]ny day on which work is performed shall count toward the 60-day threshold without regard to the number of hours worked on that day or whether the day falls on a weekend or holiday.'' *See e.g.,* OGE Informal Advisory Letter 84 x 4 and 7 Op. Off. Legal Counsel 123 (1983). The first example following proposed § 2641.204(c) illustrates the proper method of counting the 60 days in the case of an SGE. It should be noted, however, that certain *de minimis* activities performed by an SGE on a given day might not be sufficient to count that day, under limited circumstances. *See* Manning, *supra,* at 28. The Office of Government Ethics has acknowledged a narrow *de minimis* standard where the activity is insignificant, both in terms of substance and in terms of the amount of time expended, and the SGE is not compensated by the Government specifically for that particular effort. An example would be a day on which the SGE did nothing more for the Government than make a brief telephone call to confirm the date of an official meeting. Proposed § 2641.204(c)(1) would also specify the manner in which an SGE's rate of basic pay should be calculated for purposes of determining whether the rate of basic pay that he receives for his part-time or intermittent work is equal to or greater than the rate of basic pay payable for ES–5 within the meaning of section 207(c)(2)(A)(ii).

Proposed 2641.204(c)(2) concerns the application of 18 U.S.C. 207(c) to certain appointees or detailees. Specifically, this provision sets out those circumstances in which it has been determined that an individual appointed or detailed to an agency pursuant to the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3371–3376, is subject to the restrictions of section 207(c). *See* ''Applicability of the Post-Employment Restrictions of 18 U.S.C. § 207(c) to Assignees Under the Intergovernmental Personnel Act,'' Memorandum of Daniel L. Koffsky, Acting Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, to Susan F. Beard, Acting Assistant General Counsel, Department of Energy, June 26, 2000.

Proposed § 2641.204(d) emphasizes that 18 U.S.C. 207(c) is triggered upon termination from a senior employee position, not from termination of Government service, unless the two events occur simultaneously. (This interpretation applies equally with respect to sections 207(d) and 207(f) as specified in proposed §§ 2641.205(c) and 2641.206(c), respectively.) The two examples following proposed § 2641.204(d) illustrate the timing of the section 207(c) restriction in the case of a senior employee who moves from one agency to another. Since the restriction can run while an individual continues to serve as a Government employee, the first example cross-references proposed § 2641.301(a) which states that communications and appearances are permissible if made during the course of performing official duties as an employee of the United States. In the second example, the individual does not cease to be a senior employee until he terminates his senior position at the second agency.

As 18 U.S.C 207(c) and the permanent bar share several elements in common, proposed § 2641.201 is cross-referenced several times in proposed § 2641.204. For example, both section 207(a)(1) and 207(c) require that there be a communication or appearance made with the intent to influence, although in the case of section 207(c), the representation is prohibited only if made to the former senior employee's former agency. Section 2641.201 is also cross-referenced for its proposed definition of ''on behalf of any other person.''

Section 2641.204(g)—To or Before Employee of Former Agency

Proposed § 2641.204(g)(1) defines ''to or before employee of former agency.'' This provision is different from proposed § 2641.201(f) because that section focuses on employees ''of the United States'' rather than employees at the senior employee's ''former agency.''

The term ''employee'' is defined in proposed § 2641.204(g)(1) for purposes of identifying the individuals to whom a former senior employee may not direct a communication or appearance. Proposed § 2641.204(g)(1)(ii) reflects the fact that an individual serving in an agency pursuant to the IPA is deemed an ''employee'' of that agency and, hence, is an individual to whom a former senior employee of that agency may not direct a communication or appearance. Notably, the definition of employee at proposed § 2641.204(g)(1) also includes an individual detailed to a former senior employee's former agency. Section 207(g) of the statute provides that ''a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both * * *.'' As reflected in proposed § 2641.204(g)(2)(iii), we interpreted this statutory provision to mean that an employee is barred from contacting any agency to which he was detailed during his last year of senior service, regardless of the duration of the detail. We also decided, however, that section 207(g) is relevant when identifying those employees serving in a former senior employee's former agency to whom a communication or appearance cannot be directed. Accordingly, proposed § 2641.204(g)(1)(iii) specifies that the term employee encompasses an individual detailed from an agency to the former senior employee's former agency.

As noted earlier, 18 U.S.C. 207(i)(1)(A) states that ''the term 'officer or employee', when used to describe the person to whom a communication is made or before whom an appearance is made * * * shall include in subsections (a), (c), and (d), the President and the Vice President * * *.'' Under the proposed rule, a former senior employee of the Executive Office of the President is barred from contacting not only employees of that Office, but also the President and Vice President. On the other hand, former senior or very senior employees who formerly served in entities other than the Executive Office of the President would not be barred by section 207(c) or (d) from contacting the President or Vice President. This reasoning is reflected in proposed § 2641.204(g)(1)(v); proposed § 2641.204(g) is cross-referenced in § 2641.205(f) as proposed for purposes of the section 207(d) restrictions.

The definitions of ''department'' and ''agency'' in proposed § 2641.104, combined with the proposed guidance in § 2641.204(g)(2), are key to understanding the scope of 18 U.S.C. 207(c). As we noted earlier in connection with the definition of ''agency'' in proposed § 2641.104, we specifically included independent agencies (not in the legislative or judicial branches) within that definition.

As already mentioned, and as explained further below in connection with proposed § 2641.302, the Director of OGE is authorized to designate distinct and separate agency components for purposes of section 207(c). The designation of such components within an agency has the effect of narrowing the scope of the restriction as applied to former senior employees eligible to benefit from such designations.

Proposed § 2641.204(g)(2)(i) emphasizes that the 18 U.S.C. 207(c) bar applies only with respect to an agency in which the former employee served within his last year of service as a senior employee. Example 3 following proposed § 2641.204(g) illustrates the application of section 207(c) when a former senior employee's period of Government service was preceded by a break in Government service.

Consistent with past interpretation, 18 U.S.C. 207(c) is described in proposed § 2641.204(g)(2)(ii) as extending to any agency in which a former senior employee served *in any capacity* prior to his termination from a senior position, ''regardless of his position, rate of basic pay, or pay grade.'' *See, e.g.,* OGE Memorandum to Designated Agency Ethics Officials, General Counsels, and Inspectors General (February 17, 2000), available under ''DAEOgrams'' on OGE's Web site, *http://www.usoge.gov.* Thus, the former employee in proposed example 2 following § 2641.204(g) is barred as to both the Commodity Futures Trading Commission (CFTC) and the Export-Import Bank of the United States even though she served in only a GS–15 position at the CFTC.

Proposed § 2641.204(g)(2)(iii) explains that, in addition to a detail, an employee may otherwise be deemed to be serving two entities simultaneously. The regulation would recognize that many employees are required to serve on committees or similar entities as a collateral duty. The regulation would specify that an employee will be deemed an employee of such an entity if required to serve pursuant to statute or Executive order.

Defining the boundaries of an employee's former agency is key to the proper interpretation of 18 U.S.C. 207(c). Proposed § 2641.204(g)(2)(iv) addresses situations where organizational changes affecting an agency could make it difficult to determine if a successor agency is substantially the same as a former senior employee's former employing entity. For example, subsequent to an employee's termination from a senior employee position, his former employing entity could be made larger or smaller, merged in whole or in part with another agency, or even abolished.

Significantly, proposed § 2641.204(g)(2)(iv) need not be consulted unless the agency to which 18 U.S.C 207(c) applies ''has been significantly altered by organizational changes after [a senior employee's] termination from senior service * * *.'' Thus, it is not necessary to consult § 2641.204(g)(2)(iv) as proposed merely because the name of a former senior employee's former agency has changed or because some personnel have retired or transferred. If, however, an organizational change is such that the former senior employee's former employing entity ''is not identifiable as substantially the same agency from which the former senior employee terminated * * *'', then the guidance in proposed § 2641.204(g)(2)(iv)(A) applies and the section 207(c) bar will not apply with respect to that entity. *See* OGE Informal Advisory Letter 85 x 5 and example 4 following proposed § 2641.204(g).

Under proposed § 2641.204(g)(2)(iv)(B), a former senior employee's 18 U.S.C. 207(c) bar will extend to the whole of an employing entity that has been affected by organizational changes if it ''remains identifiable as substantially the same entity'' from which he terminated. Proposed example 5 emphasizes that a former employee would be barred from contacting current employees who had joined the new employing entity, but would not be barred from contacting an employee who had been transferred elsewhere. Under proposed § 2641.204(g)(2)(iv)(C), if a former employing entity is made separate but otherwise remains ''substantially the same,'' the section 207(c) bar would apply with respect to the separate entity. Proposed § 2641.204(g)(2)(iv) would require designated agency ethics officials to provide counseling in consultation with OGE when the scope

of section 207(c) is at issue as a result of an agency reorganization.

The guidance concerning the meaning of ''to or before'' in proposed § 2641.204(g)(3) closely tracks the corollary guidance in proposed § 2641.201 as does the guidance at proposed § 2641.204(g)(4) concerning public commentary. The guidance is repeated in § 2641.204 as proposed only because it has been tailored to the one-year restriction which is aimed only at communications to or appearances before an individual's former agency. Proposed § 2641.204(h), concerning the phrase ''on behalf of any other person'', similarly cites the corollary discussion in proposed § 2641.201(g).

As amended by the Ethics Reform Act of 1989, 18 U.S.C. 207(c) prohibits a former senior employee from making certain communications or appearances on behalf of ''any other person'' in connection with ''any matter on which *such person* seeks official action'' (emphasis added). The guidance at proposed § 2641.204(i)(1) reflects that the reference to ''such person'' refers to the former senior employee.

Proposed § 2641.204(i)—Matter in Which Former Employee Seeks Official Action

Proposed § 2641.204(i)(2) emphasizes that a communication or appearance can be prohibited even if not in connection with a ''particular'' matter or a ''particular matter involving a specific party or parties.'' The adjective ''particular'' does not appear in the section 207(c). *See* 17 OP. Off. Legal Counsel. 37, 41–42 (1993) (describing effect of 1989 amendments to statute). Thus, proscribed contacts include those made in connection with ''[b]road policy options that are directed to a large and diverse group of persons.'' *Compare* 5 CFR 2637.204(d). *See also* 5 CFR 2640.103(a)(1) and 2635.402(b)(3).

Consistent with existing part 2637, proposed § 2641.204(i)(2)(iii) emphasizes that a communication or appearance may be barred even though made in connection with a new matter not pending at nor of interest to the agency prior to the post-employment contact. The Ethics Reform Act of 1989 deleted the requirement in 18 U.S.C. 207(c) that the subject of a communication or appearance be ''pending before'' the former senior employee's former agency or of ''direct and substantial interest'' to it. In commenting upon H.R. 3660 prior to its passage, Senator Levin noted that ''the offense is committed if the former employee seeks official action by an agency or department employee.'' 135 Cong. Rec. S15954 (1989) (statement of Sen. Levin).

The language ''seeks official action'' distinguishes between official and unofficial acts. As implemented in proposed § 2641.204(i)(1), ''[a] former senior employee seeks official action when the circumstances establish that he is making his communication or appearance for the purpose of inducing a current employee * * * to make a decision or to otherwise act in his *official capacity*'' (emphasis added).

The proposed examples following § 2641.204(i) as proposed illustrate the concept of ''official capacity.'' In proposed example 1, the former senior employee can solicit a personal charitable contribution from a current employee of his former department since he is not requesting that the current employee act in his official capacity. In example 2 as proposed, a former senior employee wishes to invite the Secretary of his former department to a cocktail party where he would introduce the agency head to several of his private clients. The former senior employee and the Secretary do not have a history of socializing outside the office, the clients could be affected by the Secretary's official duties, and the expenses of the party are being charged to the former senior employee's consulting firm. The example advises that the former senior employee should not contact the Secretary since ''[t]he circumstances do not establish that the communication would be made other than for the purpose of inducing the Secretary to make a decision in his official capacity about the invitation.''

Proposed § 2641.205—18 U.S.C. 207(d)

The one-year ''cooling-off'' restriction of 18 U.S.C. 207(d) was enacted by the Ethics Reform Act of 1989. Section 207(d) differs from section 207(c) in that, in addition to being barred from contacting employees of his former department or agency, a former very senior employee is barred from representing another person before any individual currently appointed to an Executive Level position listed in 5 U.S.C. 5312–5316.

Proposed § 2641.205(b) provides cross-references to the appropriate paragraphs of § 2641.301 as proposed for the exceptions and waivers that in certain circumstances would negate the prohibition contained in 18 U.S.C. 207(d).

Paragraphs (d)–(i) of proposed § 2641.205 cross-reference the elements described in proposed §§ 2641.201 and 2641.204 where relevant. Where cross-references to the § 2641.204 elements are made, proposed § 2641.205 highlights the differences between the senior employee and very senior employee restrictions. Proposed § 2641.205(f) points out that, unlike section 207(c), section 207(d) does not provide for the designation of departmental or agency components as a means of narrowing its impact. Proposed § 2641.205(f) also indicates that section 207(d) applies to communications to or appearances before any agency in which an individual served *as a very senior employee* during his last year of very senior service. By comparison, as interpreted in proposed § 2641.204(g)(2)(ii), section 207(c) applies to contacts with an employee of any agency in which the individual served ''in any capacity'' during the year prior to his termination from a senior position. Also, and more significantly, section 207(d) bars contacts not only with the individual's former agency but, as noted in proposed § 2641.205(a) and (g), also with any official currently appointed to an Executive Schedule position. As emphasized in Example 2 following § 2641.205, however, we have interpreted the bar to apply only with respect to Executive Level officials who are actually listed in sections 5312–5316 of title 5 of the *United States Code.* This interpretation accords with the plain language of the provision (''any person appointed to a position in the executive branch which is listed in'' those sections).

The note following proposed § 2641.205(g) indicates that a communication to an Executive Level official may include a communication made through a subordinate of such official. A former very senior employee cannot evade the prohibition of 18 U.S.C. 207(d) simply by making a communication to a subordinate official, as long as such communication is still made with the intent that the information be conveyed to an Executive Level official and attributed to the former very senior employee, *Cf.* Memorandum for Amy L. Comstock, Director, OGE, from Joseph R. Guerra, Deputy Assistant Attorney General, OLC, January 19, 2001, available under ''Other Ethics Guidance, Conflict of Interest Prosecution Surveys and OLC Opinions'' on OGE's Web site, *http://www.usoge.gov.* This point is illustrated in proposed example 5.

Proposed § 2641.206—18 U.S.C. 207(f)

Section 207(f) of 18 U.S.C. was enacted by the Ethics Reform Act of 1989. It prohibits both former senior and former very senior employees from representing, aiding, or advising a foreign government or foreign political

party with the intent to influence a decision of an employee of a Federal department or agency. Like sections 207(c) and 207(d), the restriction is measured from the date when an employee ceases to be a senior or very senior employee and not necessarily from his termination from Government service. Like section 207(b), section 207(f) differs from the other section 207 restrictions in that it prohibits certain ''behind-the-scenes'' aid or advice in addition to prohibiting certain contacts with Government officials.

We have reserved § 2641.206(d)–(g) to indicate that OGE will revise § 2641.206 in the future additional guidance concerning section 207(f). For now, proposed § 2641.206 includes only a summary of the restriction and paragraphs concerning the restriction's applicability, commencement, and duration. Proposed § 2641.206(c) indicates that section 207(f) is a one-year restriction except as applied to a former U.S. Trade Representative or former Deputy U.S. Trade Representative. Originally a one-year restriction as applied to individuals terminating from these positions, section 609 of Pub. L. 102–395, 106 Stat. 691, amended section 207(f) to extend the one-year restriction to three years in the case of any individual becoming the U.S. Trade Representative after the 1992 effective date of that law. Subsequently, section 21(a) of Pub. L. 104–65, 109 Stat. 691, amended section 207(f)(2) to permanently bar either a former U.S. Trade Representative or former Deputy U.S. Trade Representative from engaging in the activities prohibited by section 207(f).

Subpart C—Exceptions, Waivers and Separate Components

Proposed § 2641.301(a)–(j) address the parenthetical ''except the United States'' provision contained in 18 U.S.C. 207(a)(1), (a)(2), (b), (c), and (d); the general exceptions and waivers described in section 207(j); the waiver authority in section 207(k); and section 207(c)(2)(C)'s provision for the exclusion of certain positions from the coverage of sections 207(c) and (f). Proposed § 2641.302 concerns the designation of separate and departmental components to narrow the scope of the section 207(c) bar.

Proposed § 2641.301(a)—Acting on Behalf of the United States

As indicated by the parenthetical ''except the United States'' which appears in each of the substantive restrictions of 18 U.S.C. 207 except section 207(f), otherwise prohibited activity is permissible if engaged in on behalf of the United States. In addition to this parenthetical, however, section 207(j)(1) of the current version of the statute provides that ''[t]he restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States * * *'' Proposed § 2641.301(a) implements the parenthetical language and section 207(j)(1).

The definition of ''United States'' at proposed § 2641.301(a)(1) encompasses the entire Federal Government. The District of Columbia is not part of the United States for purposes of the exception. While former employees of the government of the District of Columbia are covered by 18 U.S.C. 207(a)(1) and (a)(2), section 207(a)(3) makes it clear that the United States and the District of Columbia are separate entities for purposes of those restrictions. Thus, former employees of the United States may represent others before employees of the government of the District of Columbia and vice versa. Similarly, while section 207(j)(1) states that the restrictions of section 207 ''shall not apply to acts done in carrying out official duties on behalf of the United States *or the District of Columbia* * * *'' (emphasis added), we have interpreted this language merely to indicate that former employees of the District of Columbia may represent the government of the District of Columbia notwithstanding section 207(a)(1) or (a)(2). As we indicated earlier in connection with proposed § 2641.104, however, we have defined the District of Columbia as a State for purposes of the section 207(j) exceptions implemented in § 2641.301(b) and (c).

Proposed § 2641.301(a)(2) addresses the often repeated argument that an activity is undertaken on behalf of the United States if it benefits the United States. We have consistently rejected this expansive reading of the exception. *See, e.g.,* OGE Memorandum to Designated Agency Ethics Officials, General Counsels, and Inspectors General (February 17, 2000), available under ''DAEOgrams'' on OGE's Web site, *http://www.usoge.gov*. As proposed, the regulation indicates that the exception does not apply merely because a former employee ''is performing work funded by the Government, because he is engaging in the activity in response to a contact initiated by the Government, because the Government will derive some benefit from the activity, or because he or the person on whose behalf he is acting may share the same objective as the Government.'' Proposed examples 1, 2, and 3 are illustrative. To the extent that OGE Informal Advisory Letter 81 x 9 can be read as indicating that responses to Government-initiated exchanges are always permissible regardless of the circumstances, we expressly reject that reading here.

Proposed § 2641.301(a)(2)(i) states that activities are undertaken on behalf of the United States when undertaken in carrying out official duties as a current employee of the United States. Thus, as illustrated in examples 1 and 2 following proposed § 2641.301(a), a person who is reemployed by the United States may perform his official Government duties unfettered by the post-employment restrictions in 18 U.S.C. 207. Notably, proposed example 2 indicates that a former employee may carry out official duties as an employee of the legislative branch without violating the section 207 restrictions when she undertakes an activity for a constituent. Departing from guidance in OGE Informal Advisory Letter 81 x 4, we are not proposing to distinguish service performed for a Congressman's constituent from actions taken in furtherance of a Congressman's ''legislative function.''

The note following the proposed § 2641.301(a) examples cross-references two additional examples, found elsewhere in the regulation, which also concern the operation of this exception in the case of current employees. The second of these, example 1 following proposed § 2641.204(d), shows how the exception applies in the case of a current employee who, although having never left Government service, is a former employee by virtue of having terminated a senior employee position. But for the exception, the former senior employee might have been hindered in the performance of his official duties by 18 U.S.C. 207(c).

As described in proposed § 2641.301(a), the exception for acts undertaken on behalf of the United States is not limited to acts carried out as an *employee* of the United States. This subject was addressed in OGE Informal Advisory Letter 82 x 16, which dealt with a former employee whose law firm was hired by his former agency to represent it in a case in which the employee had been personally and substantially involved while in Government. After advising that the former employee could not negotiate the terms of the legal services contract on behalf of his firm, OGE concluded that the former employee could perform the contract by representing the agency in court, because such representations would be on behalf of the United States. OGE also stated that the former employee could ''contact [the agency] for the files, discuss briefs previously

filed by [the agency], and discuss future strategy,'' because communications and appearances made for these purposes were characterized as lacking the necessary ''intent to influence'' element.

In drafting proposed § 2641.301(a)(2)(ii)(A), we followed the result reached in 82 x 16, although we departed, in part, from the analysis in that opinion. We have concluded that a former employee acts on behalf of the United States when he serves ''[a]s a representative of the United States pursuant to a specific agreement with the United States to provide representational services involving a fiduciary duty to the United States.'' Consequently, the ''on behalf of the United States'' provision would permit not only representational contacts made by the former employee to a court (or another agency) but also any contacts with the agency with which there is an agreement to provide representational services, if those contacts are necessary for the former employee to carry out his representational duties under the agreement. Contrary to the analysis in 82 x 16, however, we decline to base the latter conclusion on the absence of intent to influence with respect to such contacts, because we do not believe that it is always the case that communications required during the course of performing a contract with an agency are necessarily made without the intent to influence the agency. This subject is discussed in more detail above in connection with the ''intent to influence'' element.

We specify in proposed § 2641.301(a)(2)(ii)(A) that the representational services must involve a ''fiduciary duty to the United States.'' This serves to emphasize that the former employee must have an independent obligation to act primarily for the benefit of the Government. *See Restatement of the Law (2d) Agency* § 13 (1958) (agreement to act on behalf of another person makes one a fiduciary with duty to act primarily for benefit of other person). It is important, therefore, to remember that a former employee will not be deemed to act on behalf of the United States merely because he is performing some kind of contract with the United States. *See Restatement* § 14N, comments a & b (distinguishing between contractor who agrees to act on behalf of principal and thereby becomes fiduciary, and non-agent contractor who is not fiduciary). OGE Informal Advisory Letter 81 x 35 focused on the restrictions applicable to a former employee who went to work for a corporation that had a contract to provide certain services to the Government. The opinion is noteworthy for its conclusion that ''[t]he fact that the contract between [the Department] and [the Corporation] requires communication between them on many questions arising under [the Project] does not authorize [the former employee's] participation in such communications.''

Communications to and appearances before the legislative branch are not prohibited by sections 207(a)(1), (a)(2), (c), or (d). On the other hand, communications or appearances before the legislative branch can be barred by section 207(b) or (f). In addition, a section 207 issue can arise when an employee of the executive branch is present at a forum held under the auspices of the legislative branch, as discussed in connection with the ''to or before'' element in proposed § 2641.201(f)(2). Under proposed § 2641.301(a)(2)(ii)(B), however, a communication or appearance made by a former employee at the request of the Congress, in the context of a Congressional hearing, will be deemed made on behalf of the United States. This interpretation makes effective the permission, under the statute, for communications to Congress and its members. The provision is limited to hearings, however, in order not to permit a former employee to use the good offices of a Congressman to facilitate otherwise prohibited contacts with executive branch personnel.

Proposed § 2641.301(b)—Acting as an Elected State or Local Government Official

In addition to excepting communications or appearances made in carrying out official duties on behalf of the United States, 18 U.S.C. 207(j)(1) authorizes a former employee to carry out official duties as an elected official of a State or local government notwithstanding sections 207(a)(1), (a)(2), (b), (c), (d), or (f). As we noted in OGE Informal Advisory Letter 87 x 1, this exception ''is grounded in considerations of federalism'' in that ''statutory restrictions should not unduly impede the ability of the elected representative of the people to perform the duties of his position.'' The two examples following proposed § 2641.301(b) highlight the requirement that the former employee be acting as an ''elected official'' of the State or local government. The term ''State'' is defined in proposed § 2641.104 to include the District of Columbia, the Commonwealth of Puerto Rico, and United States territories or possessions.

Proposed § 2641.301(c)—Acting on Behalf of Specified Entities

Proposed § 2641.301(c) describes a second exception permitting representational activity on behalf of a State or local government. The exception in 18 U.S.C. 207(j)(2) would permit communications and appearances in carrying out official duties as an employee of ''an agency or instrumentality of a State or local government'' notwithstanding sections 207(c) or (d). It also would except from those prohibitions communications and appearances made as an employee of certain institutions of higher education, hospitals, or medical research organizations. The wording of proposed § 2641.301(c) indicates that the exception also applies when the former employee is employed by more than one of the entities specified in § 2641.301(c)(1), such as by an interstate compact organization composed of several States. *See* OGE Informal Advisory Letter 87 × 1. However, as proposed example 3 illustrates, the exemption does not apply to an association of States or State officials that is not an entity carrying out governmental functions. *See* Memorandum for An Agency General Counsel, from Beth Nolan, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Applicability of the Exemption Provisions of 18 U.S.C. § 207(j)(2) to the Employment of a Former Federal Official by [an] Association* (July 2, 1999) (OGE Informal Advisory Letter 87 × 1 distinguished).

In order to qualify for the exception, the former employee must be an ''employee'' of the State or local government or other specified entity and not merely a consultant or independent contractor. This interpretation had been adopted in OGE Informal Advisory Letter 87 × 1 concerning the same exception in the previous version of 18 U.S.C. 207. That letter, citing legislative history relating to the Ethics in Government Act of 1978, had determined that the exception does not apply in the case of so-called ''hired guns.'' Use of the term ''employee'' in the new version of the statute is consistent with that legislative history. *See* 125 Cong. Rec. H3696, H3697 (daily ed. May 24, 1979). Accordingly, proposed § 2641.301(c)(2) incorporates the distinction, providing that the term ''employee'' means a person who has an employee-employer relationship with a specified entity and excludes individuals serving a specified entity as a consultant or independent contractor. Example 2 following

proposed § 2641.301(c) concerns an attorney who does not qualify for the exception because of this distinction.

Proposed § 2641.301(d)—Communicating Information Based on Special Knowledge

Proposed § 2641.301(d) implements 18 U.S.C. 207(j)(4), an exception to sections 207(c) and (d) permitting a former senior or very senior employee to make an uncompensated ''statement'' if ''based on [his] own special knowledge in the particular area that is the subject of the statement * * *.''

When originally enacted by Congress in 1978, 18 U.S.C. 207(c) prohibited a former senior employee from representing ''anyone'' before his former agency. Because section 207(c) barred self-representation (as well as the representation of others), the statute specifically permitted communications or appearances ''concerning matters of a personal and individual nature, such as personal income taxes or pension benefits.'' The statute also stated that the one-year cooling-off provision did not prevent a former senior employee from ''making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.''

The current version of 18 U.S.C. 207(c) no longer prohibits self-representation, and, therefore, the statute no longer includes an exception for communications of a personal and individual nature. On the other hand, the ''special knowledge'' exception survives. Of course, since self-representation is no longer barred, a former senior or very senior employee need not rely on this or any other exception to section 207(c) or (d) when he makes a communication solely on his own behalf.

For purposes of implementing the section 207(j)(4) exception, we propose guidance as to what the terms ''special knowledge,'' ''statement'' and ''compensation'' mean in section 207(j)(4). We indicate in proposed § 2641.301(d)(1) that a former employee will be deemed to have ''special knowledge'' with respect to the subject area ''if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.'' While this standard does not require the ''outstanding qualifications'' in a field that are the prerequisite for a section 207(j)(5) certification, discussed below, a former employee must have become knowledgeable with the subject prior to making contact with the Government. Proposed § 2641.301(d)(2) defines the term ''statement'' as ''a communication of facts directly observed by the former employee.''

The proposed definition of compensation at § 2641.301(d)(3) is broad. Reflecting the exception's amendment by the Ethics Reform Act of 1989, the proposed definition does not exclude compensation provided for by law or regulation for witnesses. However, the proposed definition of compensation does exclude the payment of actual and necessary expenses incurred in connection with making the statement. *Cf.* Memorandum of Dawn Johnson, Acting Assistant Attorney General, Office of Legal Counsel, for the Counsel to the President, January 28, 1998 (''compensation,'' within the meaning of 18 U.S.C. 203, does not include reimbursement of expenses in connection with representation), available on the DOJ Web site at *http://www.usdoj.gov/olc/1998opinions.htm*.

Proposed § 2641.301(e)—Communicating Scientific or Technological Information

Section 207(j)(5) of 18 U.S.C. permits a former employee to make communications ''solely for the purpose of furnishing scientific or technological information'' notwithstanding sections 207(a)(1), (a)(2), (c), or (d), provided that (1) the communications are made ''under procedures'' acceptable to the agency or agencies to which the communication is directed or (2) the head of such agency or agencies ''makes a certification'' that meets certain requirements. A former employee cannot use this exception to avoid the restrictions in sections 207(b) or 207(f). Thus, a former employee cannot escape the reach of either of these latter two restrictions by merely limiting his use of covered trade or treaty information to that which is of a scientific or technological character or by assisting a foreign entity only by means of furnishing scientific or technological information.

Proposed § 2641.301(e) incorporates both the procedures and certification aspects of the section 207(j)(5) exception for communication of scientific and technological information and, in effect, constitutes, two exceptions. Proposed § 2641.301(e) states the exception in general terms, and proposed § 2641.301(e)(1)–(e)(3) provides information common to both the procedures exception and the certification exception. Guidance on the promulgation and implementation of procedures is contained in proposed paragraph (e)(4). Guidance on the certification process is contained in proposed paragraph (e)(5).

As originally enacted in 1962, section 207 had provided an exception from its substantive restrictions for former employees certified as possessing ''outstanding scientific or technological qualifications'' and only when in the ''national interest.'' This certification exception, since modified, survives as part of current section 207(j)(5). Prior to the amendments to section 207 in the Ethics Reform Act of 1989, the certification mechanism freed the former employee from any post-employment restrictions attendant to such matter, not just communications solely for the purpose of furnishing scientific and technological information. *See* OGE Informal Advisory Letter 80 x 9. The 1989 amendments changed the wording of the certification exception, limiting recipients of a section 207(j)(5) certification to making contacts ''solely for the purpose of furnishing scientific or technological information.'' This change imposes a significant limitation on the scope of activities permitted by a certification, because the recipient of the certification is prohibited from making communications that are not ''solely for the purpose of furnishing scientific or technological information.''

The part of the exception involving procedures was added by the Ethics in Government Act of 1978. *See* 124 Cong. Rec. 31,983 (1978) (statement of Rep. Stratton) (explaining need for alternative in addition to existing certification mechanism). Since its original enactment, the procedures provision has always been limited to communications solely for the purpose of furnishing scientific or technological information.

The exception in 18 U.S.C. 207(j)(5) permits otherwise prohibited ''communications,'' but is silent as to ''appearances.'' We have worded proposed § 2641.301(e) so that procedures and certifications under section 207(j)(5) permit both communications and appearances. It would defeat the purpose of the exception if it permitted a former employee to make communications but not to appear before the Government to make such communications.

When drafting proposed § 2641.301(e)(1), we were aware that certain legislative history in connection with the 1978 amendments indicated that the exception applies only to communications that are made ''solely for the purpose of furnishing scientific or technological information *and*

without the intent to influence.'' *See* 124 Cong. Rec. H35,671 (1978) (emphasis added). However, as discussed earlier in connection with the ''intent to influence'' element in proposed § 2641.201(e), the post-1989 version of section 207 prohibits no communications or appearances that are not made with the intent to influence the Government. The exception in section 207(j)(5) would be surplusage if it only applied to communications and appearances that are not prohibited in the first place, *i.e.*, those made without any intent to influence. Even communications made solely for the purpose of conveying scientific or technological information may be deemed to be made with the intent to influence, if made for the purpose of affecting Government action in a matter that involves an appreciable element of dispute or discretionary Government action. Therefore, proposed § 2641.301(e)(1) reflects that a communication for the purpose of furnishing scientific or technological information may be permitted by the exception even when made in contexts involving intent to influence.

The former Marine Corps employee in proposed example 1 following § 2641.301(e)(4) as proposed, for example, may report the results of a series of scientific tests even though the methodology of those tests is expected to be and is, in fact, the subject of debate at the meeting. Moreover, he could report the results even though they tend to support the company's argument that it has complied with a certain contract specification. As emphasized in proposed § 2641.301(e)(1)(iii), the exception permits the communication of scientific or technological information in adversarial or other contexts even if the information is ''inherently influential.'' On the other hand, proposed example 1 emphasizes that the former Marine Corps employee could not present the company's argument that it has complied with a contract term regarding advance payments.

Proposed § 2641.301(e)(2) offers guidance concerning the meaning of the adjectives ''scientific'' and ''technological.'' It would provide that scientific or technological information refers, for example, to ''technical or engineering information relating to the natural sciences'' as distinguished from information ''associated with a nontechnical discipline such as law, economics, or political science.'' This distinction is consistent with the legislative history concerning the certification authority in section 207(j)(5). The Conference Report issued in connection with the Ethics in Government Act of 1978 reflected the intent of the Committee that the phrase ''scientific, technological, or other technical discipline'' excludes the social sciences. S. Conf. Rep. No. 95–127 at 77 (1978). We expect that an agency will be in the best position to interpret these adjectives in the context of its own programs and consistent with the guidance in proposed § 2641.301(e)(2).

While proposed § 2641.301(e)(2) requires that a communication convey scientific or technological information to be permissible under the exception, proposed § 2641.301(e)(3) recognizes that a communication may be made *for the purpose of* furnishing scientific or technological information notwithstanding an ''incidental reference or remark'' of a nontechnical character. Thus, like existing 5 CFR 2637.206(b), proposed § 2641.301(e)(3)(ii) recognizes the permissibility of nontechnical communications ''when necessary to appreciate the practical significance of the basic scientific or technological information provided.'' Moreover, like 5 CFR 2637.206(a), § 2641.301(e)(3)(iii) as proposed would permit incidental communications ''[i]ntended to facilitate the furnishing of scientific or technological information * * *.'' Significantly, however, proposed § 2641.301(e)(3) emphasizes that, taken as a whole, a communication (or series of related communications) must ''primarily'' convey information of a scientific or technological character.

Proposed examples 1 and 2 following § 2641.301(e)(3) are illustrative. Example 1 emphasizes that it is the former employee's own communications that must primarily convey scientific or technological information. Thus, the former employee in that example is not deemed to make a permissible ''incidental'' reference to a product's expected cost when the scientific information, although communicated on the same occasion, is communicated by another individual. On the other hand, as indicated in proposed example 2, the former employee could state the product's expected cost if the whole of her communication otherwise focused primarily on relevant scientific principles.

As specified in proposed § 2641.301(e)(4), the exception is available to a former employee where the communication is made in accordance with procedures adopted by the agency to which the communication is directed. The prerequisite that the agency to which the communication is directed is the agency whose procedures must be complied with is consistent with existing regulatory guidance at 5 CFR 2637.206(e) and with past OGE advice. *See, e.g.*, OGE Informal Advisory Letter 96 x 21.

The regulation as proposed does not specify any particular procedure or procedures that must be adopted by an agency. The language of the statute affords each agency the discretion to develop procedures it deems ''acceptable.'' Proposed § 2641.301(e)(4)(i) suggests some possible mechanisms that could be employed by an agency to ensure the proper use of the exception. Many of these are taken from existing guidance at 5 CFR 2637.206(e).

The certification provision in section 207(j)(5) would be implemented by proposed § 2641.301(e)(5). As specified in proposed § 2641.301(e)(5)(iii), these certifications must be issued by the head of the agency with which the former employee would have contact.

We have interpreted section 207(j)(5) as permitting agency heads the discretion to limit their certification to only certain of the statute's substantive restrictions. For example, in OGE Informal Advisory Letter 97 x 14, we advised a designated agency ethics official that an agency head could waive section 207(c) only. Similarly, we have included a provision at proposed § 2641.301(e)(5)(iii)(E) that confirms our view that the granting authority has discretion to impose other limitations on the scope of a section 207(j)(5) certification. As we said in OGE Informal Advisory Letter 80 x 9, a certification for technical expertise ''may be limited in nature at the discretion of the head of the agency or Department * * *.''

While the authority to grant the certification ultimately rests with the appropriate agency head, proposed § 2641.301(e)(5) incorporates the statutory requirement for advance consultation with OGE prior to issuance. We believe that the statutory ''national interest'' standard contemplates that this authority will be used infrequently. Moreover, legislative history surrounding the amendment of this provision in 1978 supports the view that certifications should be granted only in ''exceptional'' cases. S. Rep. No. 170, 95th Cong., 1st Sess. 155 (1977).

Proposed § 2641.301(e)(5) provides that a section 207(j)(5) certification may be granted to a ''former employee.'' We believe that an agency head may entertain a request for a certification from a current employee who has firm post-employment plans, provided that the effective date of the certification occurs after the employee terminates Government service.

Paragraphs (A), (B), and (C) of proposed § 2641.301(e)(5)(i) describe the three statutory criteria that must be satisfied in order for a certification to be issued. Proposed § 2641.301(e)(5)(i)(B) requires that the former employee will actually utilize his scientific, technological, or technical expertise in connection with the matter for which the waiver is granted. We believe this criterion follows from the statutory requirement that the former employee not only possess outstanding qualifications, but that he will be ''acting with respect to a particular matter which requires such qualifications.'' OGE will carefully examine the facts surrounding a waiver proposed for an individual who will occupy a management position to ensure this criterion is satisfied.

We used the term ''matter'' in proposed § 2641.301(e)(5)(i)(B). Section 207(j)(5) provides that a certification will apply with respect to a ''particular matter'' which requires outstanding qualifications in certain disciplines. Since sections 207(c) and (d) apply to any ''matter'' rather than to any ''particular matter,'' we reasoned that the policy underlying the certification authority would be ill-served by a distinction permitting experts to contact the Government concerning action focused on a ''discrete and identifiable class of persons,'' but not on broad policy issues or conceptual work. *See* the definition of ''particular matter'' at proposed § 2641.201(h)(1). *See also* 5 CFR 2640.103(a)(1).

As part of the consultation process, OGE will carefully review an agency's draft certification to ensure that it specifies all of the information required by proposed § 2641.301(e)(5)(iii). Proposed § 2641.301(e)(5)(iii)(C) requires that a certification specify the name of the person on whose behalf the former employee will be acting. We do not read section 207(j)(5) as requiring that a certification recipient act only on behalf of a person specified in the certification. Rather, as already mentioned, we believe that the certification is specific to the *matter* that will be the subject of the recipient's post-employment contacts. Accordingly, under proposed § 2641.301(e)(5)(iii)(F), a certification must include a ''description of the matter and the communications that will be permissible or, if relevant, a statement that such information is protected from disclosure by statute.''

We did not include in this proposed regulation the provision that has appeared at 5 CFR 2637.207(d) providing for pre-qualification of experts through creation of an ''agency registry.'' We are not aware that any agency has set up such a registry. Moreover, we are not convinced that such a registry would have anything but an insignificant impact on certification processing times. Indeed, we suspect that the administrative burden associated with a registry would outweigh any benefit.

Proposed § 2641.301(f)—Testifying under Oath

The amendment of 18 U.S.C. 207 by the Ethics Reform Act of 1989 prompted our proposed major revision of regulatory guidance concerning the permissibility of testimony under oath. In the prior version of the statute, section 207(h) had stated that nothing in section 207 prevented a former employee ''from giving testimony under oath * * *.'' The Ethics Reform Act of 1989 version of the statute also uses this language, in renumbered section 207(j)(6), but adds that a former employee ''who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter.''

The proposed definition of ''testimony under oath'' is drawn from language in Rule 603 of the Federal Rules of Evidence. Proposed § 2641.301(f)(1) requires that the former employee's oral or written testimony be given in a proceeding ''in which applicable procedural rules require a witness to declare by oath or affirmation that he will testify truthfully.'' In addition, the exception does not apply unless the testimony is given in connection with a ''judicial, quasi-judicial, administrative or other legally recognized proceeding.'' Taken together, these two requirements emphasize that a former employee cannot escape the restrictions of 18 U.S.C. 207 by merely raising his right hand and assuring those present at any gathering that he is telling the truth. On the other hand, provided the requirements as proposed are met, these provisions would confirm that the exception permits a witness to give testimony, except as limited by proposed § 2641.301(f)(2) concerning service as an expert witness.

As already noted, while the testimony-under-oath exception generally permits testimony offered as an expert witness, the exception is subject to a significant statutory limitation in this regard. As specified in section 207(j)(6)(A), a former employee ''who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter'' may not ''serve as an expert witness'' except for the United States or pursuant to court order.

Proposed § 2641.301(f)(2)(ii) implements the court order provision. We specifically distinguished a subpoena as not falling within this definition. The practical nature of a subpoena is such that in many contexts it may be issued under the court's authority by counsel's filling out a form, without reasoned consideration by a court unless and until the subpoena is challenged. *See, e.g., Doe* v. *DiGenova,* 779 F.2d 74 (D.C. Cir. 1985) (subpoenas—grand jury or otherwise—do not qualify as ''order[s] of a court of competent jurisdiction'' under the Privacy Act.) Thus, the mere fact that an expert witness appears in court in response to a subpoena does not mean that he is testifying pursuant to court order within the meaning of section 207(j)(6)(A). Also, a court order merely qualifying a witness to testify as an expert is not a court order that directs the witness to testify in such a way as to overcome the expert witness bar. Because the United States will be represented in most proceedings in which it has a ''direct and substantial interest'' pursuant to 18 U.S.C. 207(a)(1), the United States should make the court aware of the statutory bar where appropriate.

The proposed regulation could not, and does not attempt to, instruct a judge as to the proper standard to apply in determining whether a court order is appropriate. Proposed example 4 suggests our view of an appropriate circumstance for a court to order expert testimony. We would expect that a court would order an expert witness otherwise barred by section 207(a)(1) to testify only where there are extraordinary circumstances present, such as where there is no other equivalent expert testimony available and the employee's prior involvement in the matter will not cause him to have an undue influence on proceedings.

Of course, fact witness testimony is always allowable under the testimony-under-oath exception. However, some ''experts'' who could be fact witnesses because of having worked on matters while at their former agencies (thereby triggering the section 207(a)(1) bar) would prefer to serve as expert witnesses. An expert witness can be paid for his service as an expert while a payment for fact testimony may be prohibited by the bribery statute. *See* 18 U.S.C. 201. When Congress provided for the court order exception to the expert testimony bar in section 207, it did not intend to provide a mechanism for former employees who worked on

matters to receive compensation for testimony because of their personal knowledge of the facts.

Proposed § 2641.301(f)(3) implements section 207(j)(6) as it pertains to the permissibility of statements made under penalty of perjury. Proposed § 2641.301(f)(3) emphasizes that this exception does not authorize an employee to ''submit a pleading, application, or other document as an attorney or other representative.'' *See also* 5 CFR 2637.208(c). We also emphasize in § 2641.301(f)(3) as proposed that when the permanent bar is applicable, a former employee is subject to the limitation concerning expert witness testimony even though his testimony could also be characterized as a statement made under penalty of perjury.

The proposed note following § 2641.301(f)(3) as proposed would emphasize that, for purposes of the exception, it is irrelevant that a witness may be compensated for his testimony. On the other hand, the note alerts former employees and others to the criminal provisions in 18 U.S.C. 201(c)(3) and (d) which may prohibit fact witnesses from receiving compensation for testifying in certain forums other than as ''provided by law'' or to cover ''the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance'' at a proceeding. Separately, the note also alerts the reader to the possible existence of agency procedures relating to the production or disclosure of Government information by current or former employees. *See, e.g.,* Department of Justice regulations at 28 CFR part 16, subpart B.

Proposed § 2641.301(g)—Acting on Behalf of a Candidate or Political Party

The Office of Government Ethics Authorization Act of 1996, Pub. L. 104–179, 110 Stat. 1566, amended 18 U.S.C. 207(j) to add a new exception to sections 207(c) and (d). Under new section 207(j)(7), a former senior or very senior employee may represent a ''candidate'' for Federal or State office or ''an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.'' The proposed regulatory definitions of these terms at § 2641.301(g)(1) closely track the statutory definitions in section 207(j)(7). As noted earlier in connection with proposed § 2641.301(b) and (c), the term ''State'' is defined in § 2641.104 as proposed.

Proposed § 2641.301(g)(2)(ii) reflects that a communication or appearance must be made on behalf of ''one or more'' of the candidates or political organizations specified in § 2641.301(g)(1) (i)–(vi). This language reflects our interpretation that the exception is available to a former senior or very senior employee who is simultaneously acting on behalf of more than one of the specified candidates or political organizations.

If the former senior or very senior employee is representing a candidate, section 207(j)(7) applies only if the employee makes the communication or appearance on behalf of the candidate ''in his or her capacity as a candidate.'' Accordingly, the former Attorney General in proposed examples 2 and 3 following proposed § 2641.301(g) could seek official action from a Government official about a tax matter of interest to a State committee, but could not make a communication on behalf of a candidate seeking the dismissal of an enforcement action involving the candidate's family business.

The exception is available to a former senior or very senior employee who is retained either directly by a candidate or specified political organization or who is hired by a third person who provides services exclusively to candidates or the specified political organizations. Significantly, the exception is not available if the former employee is ''employed by'' any other person or entity at the time he makes the communication or appearance. This limitation, described at proposed § 2641.301(g)(2)(i), is illustrated in example 4. The former senior employee in that example cannot avoid the section 207(c) bar by using the exception because he is employed by a firm that does not exclusively ''represent, aid, or advise'' the specified persons or entities.

Section 207(j)(7) applies only when the communication or appearance is made ''solely on behalf of'' a specified candidate or political organization. We would highlight this restriction by denoting it as one of the ''limitations'' at § 2641.301(g)(2) as proposed.

Finally, proposed § 2641.301(g) recognizes that even a communication or appearance purportedly made solely on behalf of a specified person or entity may unavoidably also involve a representation of the former senior or very senior employee's employer. Since the exception contemplates that former employees may become ''employed by'' third persons or entities who provide services exclusively to candidates or political organizations, we did not believe that such an affiliation should preclude use of the exception. Accordingly, we indicate that a former employee may make a communication or appearance on behalf of such a third person or entity, described in proposed § 2641.301(g)(2)(i)(B), provided the communication or appearance otherwise meets the requirements for the § 2641.301(g) exception as proposed.

Proposed § 2641.301(h)—Acting on Behalf of an International Organization Pursuant to a Waiver

Section 207(j)(3) was added by the Ethics Reform Act of 1989 version of section 207. This exception provides that the restrictions of the statute shall not apply to ''an appearance or communication on behalf of, or aid or advice to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.'' The Secretary of State has issued several section 207(j)(3) waivers.

Proposed § 2641.301(h) provides that a section 207(j)(3) waiver may be granted to any ''former employee.'' We believe that the Secretary of State may entertain a request for a waiver from a current employee who has firm post-employment plans, provided that the effective date of the waiver occurs after the employee becomes a former employee.

Section 2641.301(i)—Acting as an Employee of a Government-Owned, Contractor Operated Entity Pursuant to a Waiver

Section 207(k) of 18 U.S.C. authorizes the President to waive some or all of the substantive restrictions of section 207 for up to 25 current employees of the executive branch (excluding any former employees who may be continuing to benefit from previously issued waivers). Subject to a slightly more flexible provision relating to prior employment at certain laboratories, a waiver under this section applies to an individual who returns to the same Government-owned, contractor operated entity by which he was employed just prior to entering Government service. Proposed § 2641.301(i) re-states the statutory criteria and procedures applicable to such waivers.

Proposed § 2641.301(j)—Waiver for Certain Positions From the Prohibitions of 18 U.S.C. 207 (c) and (f)

Apart from the general exceptions and waivers described in section 207(j) and the waiver authority set forth in section 207(k), section 207(c) is not applicable to any former senior employee whose Government position has been waived from the prohibition by the Director of OGE. *See* section 207(c)(2)(C).

On February 1, 1991 OGE published an interim rule (with request for

comments), which established procedures to waive positions pursuant to section 207(c)(2)(C). OGE has published waived positions as appendix A to 5 CFR part 2641.

OGE received three written comments in response to the 1991 rulemaking. One comment was generally supportive of the interim rule. A second comment raised, in part, the issue of the applicability of section 207(c) to employees detailed to senior employee positions. That issue has already been discussed as part of the discussion of the definition of ''senior employee'' in proposed § 2641.104. The third comment requested ''clarification on the standards which will be used in determining whether to grant a waiver.'' More specifically, the comment stated that the rule ''could be improved by adding a list of factors to consider for determining whether there would be a potential for the use of undue influence or unfair advantage.''

The statute lists two criteria that must be satisfied in order for the Director to waive a position from section 207(c). First, the Director must determine that the imposition of section 207(c) ''would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions,'' under section 207(c)(2)(C)(i). Second, the Director must determine that ''granting the waiver would not create the potential for use of undue influence or unfair advantage,'' under section 207(c)(2)(C)(ii). Our interim rule listed some factors that could be relevant to such determinations, and the proposed rule would add additional guidance. It is impossible, however, to develop an exhaustive list of factors that could be considered. The waiver procedure envisions a case-by-case evaluation of the facts related to the hardship on the agency and the potential for undue influence and unfair advantage. It is up to the agency to bring any relevant factors to our attention in order to permit the Director to make the determinations required under the statute.

In addition to modifying certain definitions, as already discussed, we are proposing to make several other changes to the existing provisions of part 2641 relating to waivers. First, as the underlying statute states that OGE may *waive* the restrictions of section 207(c), we have used the term ''waiver'' throughout the new, renumbered § 2641.301(j) as proposed, rather than the term ''exemption'' which appears in existing § 2641.201(d). We would also renumber the existing paragraphs concerning waivers so that the paragraph describing the statutory criteria would appear in proposed § 2641.301(j)(2) as proposed. In addition, we would reorder the statutory criteria in renumbered § 2641.301(j)(2) as proposed to track the order in which they are set forth in the statute.

We propose to modify renumbered § 2641.301(j) to emphasize that a waiver of section 207(c) will operate to waive the restriction of section 207(f). This result follows from the fact that the one-year ban on providing certain assistance to foreign governments or foreign political parties set forth in section 207(f) applies, *inter alia,* to ''[a]ny person who is subject to the restrictions contained in subsection (c) * * *'' of section 207. Thus, if a former senior employee is not subject to section 207(c) because that restriction has been waived by the Director of OGE, then he will similarly not be subject to section 207(f). We are proposing to insert necessary references to section 207(f) in renumbered § 2641.301(j). Along the same lines, we propose that the Director consider, in relation to the statutory criterion for waiver at renumbered § 2641.301(j)(2)(iii), the consequences of a position's waiver from the restrictions pertaining to foreign entities.

We are proposing to amend renumbered § 2641.301(j)(1) to indicate that OGE may consider waiving restrictions for a position if it ''could be occupied by a senior employee.'' We chose this wording mainly because individuals serving in Senior Executive Service positions are paid basic rates of pay which range from ES–1 to ES–6 depending upon their individual qualifications. As long as a position *could* be occupied by a senior employee, OGE will not decline to consider a waiver merely because the current incumbent's pay rate is less than the ES–5 rate of basic pay triggering senior employee status.

We are proposing to add an example to follow proposed renumbered § 2641.301(j)(1), concerning eligible senior positions. As specified in 18 U.S.C. 207(c)(2)(C) and as would be reflected in renumbered § 2641.301(j)(1), positions for which the rate of basic pay is ''specified in'' or ''fixed according to'' the Executive Schedule are ineligible for waiver. Proposed example 1 illustrates the application of this limitation.

Waivers may not be issued to prevent or remedy individual hardships, but rather to address programmatic concerns. In the past, some waivers have been sought to ameliorate the effects of the one-year cooling-off provision as it would apply to a particular individual, rather than to prevent expected recruitment problems. The Office of Government Ethics has not granted such waivers. *See, e.g.*, OGE Informal Advisory Letter 94 x 12. *See also* OGE Informal Advisory Letter 96 x 15, in which the Director of OGE declined to grant a waiver to remedy the consequences of an agency's misinterpretation of a personnel law which resulted in the retroactive reinstatement of an individual to her former senior position and the renewal of her one-year cooling-off period.

We are proposing to modify renumbered § 2641.301(j)(3)(i) by inserting the word ''recommend'' to emphasize the role of the designated agency ethics official. OGE expects that a request will not be forwarded for consideration by the Director unless the ethics official believes that waiver is warranted.

We are proposing to reword the description of the ''hardship'' criterion, at renumbered § 2641.301(j)(2)(i) and (ii), to emphasize what must be central to an agency's recommendation concerning this element. An agency must show that it ''has experienced or is experiencing undue hardship in obtaining qualified personnel'' and that ''[w]aiver of the restriction with respect to the position or positions is expected to ameliorate the recruiting difficulties.'' *See* OGE Informal Advisory Letter 97 x 16.

We are proposing to add an additional factor that would support an agency's claim of recruitment difficulties. Proposed § 2641.301(j)(2)(i)(A) confirms the relevance of position vacancy rates. Moreover, we are proposing to modify the factor at existing § 2641.201(d)(5)(ii), which currently provides that the Director of OGE will consider, *inter alia,* that the incumbent of a position proposed for waiver possess ''outstanding qualifications in a scientific, technological, or other technical discipline.'' We would revise this factor, at renumbered § 2641.301(j)(2)(i)(C), to include outstanding qualifications in any other ''specialized discipline.''

We are proposing to add a new sentence, at renumbered § 2641.301(j)(3)(i), indicating that a designated agency ethics official ''may, at any time, request that a current waiver be revoked.'' In addition, we are proposing to delete the requirement that letters must be submitted annually to OGE concerning the continued waiver of the restriction. Finally, because OGE need publish a rule only when a revision to appendix A is warranted as a result of the granting of a new waiver or the revocation of an existing waiver, we propose to drop the requirement in existing § 2641.201(d)(3) that OGE

annually publish an updated compilation. As proposed, renumbered § 2641.301(j)(3)(ii) would merely require that the Director of OGE ''maintain a listing'' of waived positions in appendix A to 5 CFR part 2641.

Section 2641.301(k)—Miscellaneous Statutory Exceptions

Proposed § 2641.301(k) lists statutory provisions, other than those in 18 U.S.C. 207 itself, which modify the scope of the post-employment statute as it would otherwise apply to specified former employees or classes of former employees. We invite reviewers of this proposed rule to review our list and suggest modifications or additions.

Section 2641.302—Component Designations

The scope of 18 U.S.C. 207(c) can be narrowed through designation, by the Director, of separate departmental or agency components. Authority for the designation of separate components is set forth in section 207(h). On February 1, 1991, OGE published an interim rule establishing procedures, currently codified at 5 CFR 2641.201(e), to designate separate agency components. OGE has published agency component designations as appendix B to 5 CFR part 2641.

We are proposing to make several changes to existing § 2641.201(e), which would be renumbered as § 2641.302. We have reorganized the paragraphs in existing § 2641.201(e) concerning component designations so that the paragraph describing the statutory criteria would appear before the paragraph relating to procedures. In addition, we have reordered the two statutory criteria in renumbered § 2641.302(c). We have also changed the due date for the written updates, required by existing § 2641.201(e)(3)(ii), to July 1 and have dropped the requirement, at existing § 2641.201(e)(3)(iii), that the Director of OGE publish an annual compilation of designated components. OGE would ''maintain a listing'' of designations in appendix B and would publish amendatory rules only when necessary.

For clarity, we would avoid use of the term ''component'' in renumbered § 2641.302(a) when referring to an undesignated agency or bureau within a parent agency. We are also proposing to add two examples to follow that section. The first illustrates the effect of a component designation in the case of a former senior employee of a parent agency. The second example concerns a former senior employee of a designated component. Both proposed examples would also show that an agency office that some might characterize as a ''component'' will, if not designated by the Director of OGE, nevertheless be considered part of the parent for purposes of determining the scope of the section 207(c) bar.

We propose to list four additional factors that the Director of OGE will consider in connection with the ''distinct and separate'' finding required by the statute. The first of these additional factors, at renumbered § 2641.302(c)(1)(iii), would indicate that the Director will consider ''[t]he degree of supervision exercised by the parent over the component.'' In view of this addition, we are proposing to delete much of existing § 2641.201(e)(7). That section had made clear that the Director may designate subordinate agencies or bureaus as distinct and separate from a parent notwithstanding that the parent may exercise some degree of general supervision over the subordinate entity. We would, however, retain the last sentence of existing § 2641.201(e)(7). As reworded and retitled, renumbered § 2641.302(d) would continue to indicate that the Director will not ordinarily designate agencies or other administrative units that are encompassed by or otherwise supervised by an existing designated component.

The other three new factors proposed at renumbered § 2641.302(c)(1) derive from OGE's experience in deciding several designation requests over the past few years. New § 2641.302(c)(1)(iv) would indicate that the Director will consider ''[w]hether the component exercises responsibilities that cut across organizational lines within the parent.'' We have declined to designate an office that had been created administratively to provide personnel, payroll, and similar services to the parent and to its designated components. We also declined to designate an Inspector General's office as a component distinct and separate from the parent and other designated components. The two other new factors will confirm the relevance of the size of the component, both in absolute and relative terms. In one instance, for example, we declined to designate an office of fewer than 25 people that also would have been very small in relation to other designated components of the parent.

In view of the passage of time since the original publication of part 2641, we are also proposing to delete existing § 2641.201(e)(3)(i) concerning the effective date of the Director's initial post-Ethics Reform Act designations. The introductory paragraph in Appendix B would continue to provide that ''[e]xcept as otherwise indicated, all designations are effective as of January 1, 1991.'' We also would reorganize existing § 2641.201(e)(3)(ii) by creating separate paragraphs, proposed § 2641.302(e)(1) and (e)(2), respectively titled ''Agency recommendation'' and ''Agency update.''

Existing § 2641.201(e)(4) currently provides that a new designation ''shall be effective as of the effective date of the rule that creates the designation * * *.'' Since a designation can substantially affect the scope of 18 U.S.C. 207(c) as applied to particular individuals, it is important that the designation become effective as soon as possible. We are proposing to modify existing § 2641.201(e)(4) to establish the date of publication as the effective date for all future designations. However, since a revocation has the effect of expanding the section 207(c) bar, we propose to retain the 90-day delayed effective date with respect to revocations, now at renumbered § 2641.302(f). As before, a revocation would not apply to any individual who terminated senior service prior to the expiration of the 90-day period.

We also propose to revise existing § 2641.201(e)(4) so that a new component designation ''shall be effective as to individuals who terminated senior service either before, on or after that date.'' This proposed change, at renumbered § 2641.302(f), would serve to mitigate the consequences of administrative delays in connection with the publication of a rule designating a new component.

As stated earlier in relation to § 2641.204(g), it is necessary to identify a former senior employee's ''former agency'' in order to determine the scope of 18 U.S.C. 207(c). If a designated component is determined to be no longer identifiable as substantially the same entity, the section 207(c) bar will not apply to a former senior employee of that component. Example 1 following § 2641.302(g) as proposed illustrates this concept. In the case of a designated component that remains identifiable as substantially the same entity, the bar will apply to a former senior employee as if the whole of the reorganized entity had been designated as a distinct and separate component by the Director. Proposed example 2 as proposed illustrates this idea. The example also points out that a former employee would not be barred from contacting a current employee who had been transferred outside the boundaries of the designated component, as reorganized.

Although OGE has assigned the ''appropriate'' designated agency ethics official the primary responsibility for applying the standards of proposed

§ 2641.204(g) in the context of agency components, we emphasize that proposed § 2641.302(g) would not constitute a delegation of the Director's authority to make or revoke component designations. Rather, it would reflect the practical necessity of determining if, subsequent to a reorganization, there is an identifiable successor to a component that had been previously designated as distinct and separate by OGE.

Agency ethics officials would need turn to § 2641.302(g) as proposed only when a designated component has been ''significantly altered by organizational changes.'' Proposed § 2641.302(g) requires that the determination required by § 2641.302(g) be made in consultation with OGE. While agency officials will be most familiar with the details of a significant reorganization, OGE personnel can assist in determining whether a designated component remains ''identifiable as substantially the same entity.'' Moreover, such consultation should ensure that advice rendered to a particular individual will be consistent with any subsequent revision of appendix B by the OGE Director.

Appendixes

Finally, we are proposing to delete existing footnotes 4 and 5 from the appendix B listing for the Department of Justice. The information in those footnotes would, henceforth, be contained in parentheses following the appropriate component.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments on this proposed regulation, to be received by May 19, 2003. The comments will be carefully considered and any appropriate changes will be made to the regulation before a final rule is adopted and published in the **Federal Register** by OGE.

Executive Order 12866

In promulgating this proposed rule, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Parts 2637 and 2641

Conflict of interests, Government employees.

Approved: January 31, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR Chapter XVI as follows:

Under the authority of 5 U.S.C. App (Ethics in Government Act of 1978):

1. Part 2637 is removed.

2. Part 2641 is revised to read as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Subpart A—General Provisions

Sec.

2641.101 Purpose.
2641.102 Applicability.
2641.103 Enforcement and penalties.
2641.104 Definitions.
2641.105 Advice.

Subpart B—Prohibitions

2641.201 Permanent restriction on any former employee's representations to United States concerning particular matter in which the employee participated personally and substantially [18 U.S.C. 207(a)(1)].
2641.202 Two-year restriction on any former employee's representations to United States concerning particular matter for which the employee had official responsibility [18 U.S.C. 207(a)(2)].
2641.203 One-year restriction on any former employee's representations, aid, or advice concerning ongoing trade or treaty negotiation [18 U.S.C. 207(b)].
2641.204 One-year restriction on any former senior employee's representations to former agency concerning any matter, regardless of prior involvement [18 U.S.C. 207(c)].
2641.205 One-year restriction on any former very senior employee's representations to former agency or certain officials concerning any matter, regardless of prior involvement [18 U.S.C. 207(d)].
2641.206 One-year restriction on any former senior or very senior employee's representations on behalf of, or aid or advice to, foreign entity [18 U.S.C. 207(f)].

Subpart C—Exceptions, Waivers and Separate Components

2641.301 Statutory exceptions and waivers.
2641.302 Separate agency components.

Appendix A to Part 2641—Positions Waived from 18 U.S.C. 207(c) and (f)
Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2641.101 Purpose.

(a) *Purpose of 18 U.S.C. 207.* 18 U.S.C. 207 prohibits certain acts by former employees (including current employees who formerly served in ''senior'' or ''very senior'' employee positions) which involve, or may appear to involve, the unfair use of prior Government employment. None of the restrictions of section 207 prohibit any former employee, regardless of Government rank or position, from accepting employment with any particular private or public employer. Rather, section 207 prohibits a former employee from providing certain services to or on behalf of non-Federal

employers or other persons, whether or not done for compensation. These restrictions are personal to the employee and are not imputed to others. (*See*, however, the note following § 2641.103 concerning 18 U.S.C. 2.)

(b) *Purpose of part 2641.* This part 2641 provides interpretive guidance explaining the scope and content of 18 U.S.C. 207 as it applies to former employees of the executive branch or of certain independent agencies (including current employees who formerly served in ''senior'' or ''very senior'' employee positions). Although certain restrictions in section 207 apply to former employees of the District of Columbia, Members and elected officials of the Congress and certain legislative staff, and employees of independent agencies in the legislative and judicial branches, this part is not intended to provide guidance to those individuals.

Note to § 2641.101: Part 2641 does not address post-employment restrictions that may be contained in laws or authorities other than 18 U.S.C. 207. These restrictions include those in 18 U.S.C. 203 and 41 U.S.C. 423(d).

§ 2641.102 Applicability.

Since its enactment in 1962, 18 U.S.C. 207 has been amended several times. As a consequence of these amendments, former executive branch employees are subject to varying post-employment restrictions depending upon the date they terminated Government service (or service in a ''senior'' or ''very senior'' employee position).

(a) *Employees terminating on or after January 1, 1991.* Former employees who terminated or employees terminating Government service (or service in a ''senior'' or ''very senior'' employee position) on or after January 1, 1991, are subject to the provisions of 18 U.S.C. 207 as amended by the Ethics Reform Act of 1989, title I, Public Law 101–194, 103 Stat. 1716 (with amendments enacted by Act of May 4, 1990, Public Law 101–280, 104 Stat. 149) and by subsequent amendments. This part 2641 provides guidance concerning section 207 to these former employees.

(b) *Employees terminating between July 1, 1979 and December 31, 1990.* Former employees who terminated service between July 1, 1979, and December 31, 1990, are subject to the provisions of section 207 as amended by the Ethics in Government Act of 1978, title V, Public Law 95–521, 92 Stat. 1864 (with amendments enacted by Act of June 22, 1979, Public Law No. 96–28, 93 Stat. 76). Regulations providing guidance concerning 18 U.S.C. 207 to these employees were last published in the 2003 edition of Title 5 of the Code of Federal Regulations, revised as of January 1, 2003.

(c) *Employees terminating prior to July 1, 1979.* Former employees who terminated service prior to July 1, 1979, are subject to the provisions of 18 U.S.C. 207 as enacted in 1962 by the Act of October 23, 1962, Public Law 87–849, 76 Stat. 1123.

Note to § 2641.102: The provisions of this part 2641 reflect amendments to 18 U.S.C. 207 enacted subsequent to the Ethics Reform Act of 1989 and before [the effective date of the final rule]. An employee who terminated Government service (or service in a ''senior'' or ''very senior'' employee position) between January 1, 1991, and [the effective date of the final rule] may have become subject, upon termination, to a version of the statute that existed prior to the effective date of one or more of those amendments. Those amendments concerned: (1) Changes, effective in 1990 and 1996, concerning the rate of basic pay triggering ''senior employee'' status for purposes of section 207(c); (2) the reinstatement and subsequent amendment of the Presidential waiver authority in section 207(k); (3) the length of the restriction set forth in section 207(f) as applied to a former United States Trade Representative or Deputy United States Trade Representative; (4) the addition of section 207(j)(7), an exception to section 207(c) and (d); and (5) a change to section 207(j)(2)(B), an exception to section 207(c) and (d).

§ 2641.103 Enforcement and penalties.

(a) *Enforcement.* Criminal and civil enforcement of the provisions of 18 U.S.C. 207 is the responsibility of the Department of Justice. An agency is required to report to the Attorney General any information, complaints or allegations of possible criminal conduct in violation of title 18 of the United States Code, including possible violations of section 207 by former officers and employees. *See* 28 U.S.C. 535. When a possible violation of section 207 is referred to the Attorney General, the referring agency shall concurrently notify the Director of the Office of Government Ethics of the referral in accordance with 5 CFR 2638.603.

(b) *Penalties and injunctions.* 18 U.S.C. 216 provides for the imposition of one or more of the following penalties and injunctions for a violation of section 207:

(1) *Criminal penalties.* 18 U.S.C. 216(a) sets forth the maximum imprisonment terms for felony and misdemeanor violations of section 207. Section 216(a) also provides for the imposition of criminal fines for violations of section 207. For the amount of the criminal fines that may be imposed, *see* 18 U.S.C. 3571.

(2) *Civil penalties.* 18 U.S.C. 216(b) authorizes the Attorney General to take civil actions to impose civil penalties for violations of section 207 and sets forth the amounts of the civil fines.

(3) *Injunctive relief.* 18 U.S.C. 216(c) authorizes the Attorney General to seek an order from a United States District Court to prohibit a person from engaging in conduct which violates section 207.

(c) *Other relief.* In addition to any other remedies provided by law, the United States may, pursuant to 18 U.S.C. 218, void or rescind contracts, transactions, and other obligations of the United States in the event of a final conviction pursuant to section 207, and recover the amount expended or the thing transferred or its reasonable value.

Note to § 2641.103: A person or entity who aids, abets, counsels, commands, induces, or procures commission of a violation of section 207 is punishable as a principal under 18 U.S.C. 2.

§ 2641.104 Definitions.

For purposes of this part:

Agency means any department, independent establishment, commission, administration, authority, board or bureau of the United States or Government corporation. The term includes any independent agency not in the legislative or judicial branches.

Agency ethics official means the designated agency ethics official (DAEO) or the alternate DAEO, appointed in accordance with 5 CFR 2638.202(b), and any deputy ethics official described in 5 CFR 2638.204.

Department means one of the executive departments listed in 5 U.S.C. 101.

Designated agency ethics official (DAEO) means the official designated under 5 CFR 2638.201 to coordinate and manage an agency's ethics program.

Employee means, for purposes of determining the individuals subject to 18 U.S.C. 207, any officer or employee of the executive branch or any independent agency that is not a part of the legislative or judicial branches. The term does not include the President or the Vice President (except, with respect to the Vice President, as otherwise provided), an enlisted member of the Armed Forces, or an officer or employee of the District of Columbia. The term includes an individual appointed as an employee or detailed to the Federal Government under the Intergovernmental Personnel Act (5 U.S.C. 3371–3376) or specifically subject to section 207 under the terms of another statute. It encompasses senior employees, very senior employees, and special Government employees. (This term is redefined elsewhere in this part, as necessary, when the term is used for other purposes.)

Executive branch includes an executive department as defined in 5 U.S.C. 101, a Government corporation, an independent establishment (other than the General Accounting Office), the Postal Service, the Postal Rate Commission, and also includes any other entity or administrative unit in the executive branch.

Former employee means an individual who has completed a period of service as an employee. Unless otherwise indicated, the term encompasses a former senior employee and a former very senior employee. An individual becomes a former employee at the termination of Government service, whereas an individual becomes a former senior employee or a former very senior employee at the termination of service in a senior or very senior employee position. Consistent with 18 U.S.C. 202(c) and the definition of ''employee'' in this section, the Vice President is a former employee only for purposes of 18 U.S.C. 207(d) and (f) [§§ 2641.205 and 2641.206] and any applicable exceptions to those restrictions; there are no other section 207 or part 2641 restrictions applicable to the Vice President.

Example 1 to the definition of former employee: An individual served as an employee of the Agency for International Development, an agency within the executive branch. Since he was, therefore, an ''employee'' as that term is defined in this section by virtue of having served in the executive branch, he became a ''former employee'' when he terminated Government service to pursue his hobbies.

Example 2 to the definition of former employee: An individual served as an employee of the Tennessee Valley Authority (TVA). Since the TVA is a corporation owned or controlled by the Government of the United States, she served as an employee in the ''executive branch'' as that term is defined in this section. She became a ''former employee,'' therefore, when she terminated Government service to do some traveling.

Example 3 to the definition of former employee: An individual terminated a GS–14 position in the executive branch to accept a position in the legislative branch. He did not become a ''former employee'' when he terminated service in the executive branch since he did not terminate ''Government service'' as that term is defined in this section.

Example 4 to the definition of former employee: An individual is appointed by the President to serve as a special Government employee on the Oncological Drug Advisory Committee at the Department of Health and Human Services. The special Government employee meets with the committee five days per year. She does not terminate Government service at the end of each meeting of the committee and therefore does not at that time become a ''former employee.''

Example 5 to the definition of former employee: An individual is a Major in the U.S. Army Reserve. The Major earns points toward retirement by participating in weekend drills and performing active duty for training for two weeks each year. The Major is not a special Government employee when he performs weekend drills, but is considered to be one while on active duty for training. The Major is considered to be a ''former employee'' when he terminates each period of active duty for training.

Former senior employee is an individual who terminates service in a senior employee position (without successive Government service in another senior position).

Former very senior employee is an individual who terminates service in a very senior employee position (without successive Government service in another very senior employee position).

Government corporation means, for purposes of determining the individuals subject to 18 U.S.C. 207, a corporation that is owned or controlled by the Government of the United States. For purposes of identifying or determining individuals with whom post-employment contact is restricted, matters to which the United States is a party or has a direct and substantial interest, decisions which a former senior or very senior employee cannot seek to influence on behalf of a foreign entity, and whether a former employee is acting on behalf of the United States, it means a corporation in which the United States has a proprietary interest as distinguished from a custodial or incidental interest as shown by the functions, financing, control, and management of the corporation.

Government service means a period of time during which an individual is employed by the Federal Government. As applied to a special Government employee (SGE), Government service refers to the period of time covered by the individual's appointment (or other act evidencing employment with the Government), regardless of any interval or intervals between days actually served. *See* example 4 to the definition of *former employee* in this section. In the case of Reserve officers of the Armed Forces or officers of the National Guard of the United States who are not otherwise employees of the United States, Government service shall be considered to end upon the termination of a period of active duty or active duty for training during which they served as SGEs. *See* example 5 to the definition of *former employee* in this section.

He, his, and *him* include she, hers, and her, and vice versa.

Judicial branch means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to Article I of the United States Constitution, including the United States Court of Appeals for the Armed Forces, the United States Claims Court, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch.

Legislative branch means the Congress; it also means the Office of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch.

Person includes an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization, institution, or entity, including any officer, employee, or agent of such person or entity. Unless otherwise indicated, the term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State and local governments. The term includes the ''United States'' as that term is defined in § 2641.301(a)(1).

Senior employee means an employee, other than a very senior employee who is:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule);

(2) Employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment or additional pay such as bonuses, awards, and various allowances, is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service;

(3) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B);

(4) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B); or

(5) An active duty commissioned officer of the uniformed services serving in a position for which the pay grade (as specified in 37 U.S.C. 201) is pay grade O–7 or above.

Example 1 to the definition of senior employee: A former administrative law judge serves on a commission created within the executive branch to adjudicate certain claims arising from a recent military operation. The position is uncompensated but the judge

receives travel expenses. The judge is not employed in a position for which the rate of pay is specified in or fixed according to the Executive Schedule, is not serving in a position to which he was appointed by the President or Vice President under 3 U.S.C. 105(a)(2)(B) or 106(a)(1)(B), and is not employed in a position for which the basic rate of pay (exclusive of locality and additional pay) is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service. He is not a senior employee.

Example 2 to the definition of senior employee: A doctor is hired to fill a ''senior-level'' position and is initially compensated pursuant to 5 U.S.C. 5376 at a rate of basic pay slightly less than that payable for level 5 of the Senior Executive Service. If both the annual pay adjustment provided for in 5 CFR 534.504 and the periodic pay adjustment authorized in 5 CFR 534.503 result in a rate of basic pay equal to or above the rate of basic pay payable for level 5 of the Senior Executive Service, the doctor will become a senior employee.

Special Government employee means an officer or employee of the executive branch or an independent agency, as specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days.

State means one of the fifty States of the United States and the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Very senior employee means an employee who is:

(1) Serving in the position of Vice President of the United States;

(2) Employed in a position which is either listed in 5 U.S.C. 5312 or for which the rate of pay is equal to the rate of pay payable for level I of the Executive Schedule;

(3) Employed in a position in the Executive Office of the President which is either listed in 5 U.S.C. 5313 or for which the rate of pay is equal to the rate of pay payable for level II of the Executive Schedule;

(4) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(A); or

(5) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(A).

§ 2641.105 Advice.

(a) *Agency ethics officials.* Current or former employees or others who have questions about 18 U.S.C. 207 or about this part 2641 should seek advice from a designated agency ethics official or another agency ethics official. The agency in which an individual formerly served has the primary responsibility to provide oral or written advice concerning a former employee's post-employment activities. An agency ethics official, in turn, may consult with other agencies, such as those before whom a post-employment communication or appearance is contemplated, and with the Office of Government Ethics.

(b) *Office of Government Ethics.* The Office of Government Ethics (OGE) will provide advice to agency ethics officials and others concerning 18 U.S.C. 207 and this part 2641. The OGE may provide advice orally or through issuance of a written advisory opinion and shall, as appropriate, consult with the agency or agencies concerned and with the Department of Justice.

(c) *Effect of advice.* Reliance on the oral or written advice of an agency ethics official or the OGE cannot ensure that a former employee will not be prosecuted for a violation of 18 U.S.C. 207. However, good faith reliance on such advice is a factor that may be taken into account by the Department of Justice (DOJ) in the selection of cases for prosecution. In the case in which OGE issues a *formal* advisory opinion in accordance with subpart C of 5 CFR part 2638, the DOJ will not prosecute an individual who acted in good faith in accordance with that opinion. *See* 5 CFR 2638.309.

(d) *Contacts to seek advice.* A former employee will not be deemed to act on behalf of any other person in violation of 18 U.S.C. 207 when he contacts an agency ethics official or other employee of the United States for the purpose of seeking guidance concerning the applicability or meaning of section 207 as applied to his own activities.

(e) *No attorney-client privilege.* Disclosures made by a current or former employee to an agency ethics official, to any Government attorney, or to an employee of the Office of Government Ethics are not protected by an attorney-client privilege.

Subpart B—Prohibitions

§ 2641.201 Permanent restriction on any former employee's representations to United States concerning particular matter in which the employee participated personally and substantially [18 U.S.C. 207(a)(1)].

(a) *Basic prohibition of 18 U.S.C. 207(a)(1).* No former employee shall knowingly, with the intent to influence, make any communication to or appearance before an employee of the United States on behalf of any other person in connection with a particular matter involving a specific party or parties, in which he participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(a)(1) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(4) Testifying under oath. *See* § 2641.301(f). (Note that this exception from § 2641.201 is generally not available for expert testimony. *See* § 2641.301(f)(2).)

(5) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(6) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(a)(1) is a permanent restriction that commences upon an employee's termination from Government service. The restriction lasts for the life of the particular matter involving specific parties in which the employee participated personally and substantially.

(d) *Communication or appearance*—(1) *Communication.* A former employee makes a communication when he imparts or transmits information of any kind, including facts, opinions, ideas, questions or direction, to an employee of the United States, whether orally, in written correspondence, by electronic media, or by any other means. This includes only those communications with respect to which the former employee intends that the information conveyed will be attributed to himself, although it is not necessary that any employee of the United States actually recognize the former employee as the source of the information.

(2) *Appearance.* A former employee makes an appearance when he is physically present before an employee of the United States, in either a formal or informal setting. Although an appearance also may be accompanied by certain communications, an appearance need not involve any communication by the former employee.

(3) *Behind-the-scenes assistance.* Nothing in this section prohibits a former employee from providing assistance to another person, provided that the assistance does not involve a communication to or an appearance before an employee of the United States.

Example 1 to paragraph (d): A former employee of the Federal Bureau of

Investigation makes a brief telephone call to a colleague in her former office concerning an ongoing investigation. She has made a communication. If she personally attends an informal meeting with agency personnel concerning the matter, she will have made an appearance.

Example 2 to paragraph (d): A former employee of the National Endowment for the Humanities (NEH) accompanies other representatives of an NEH grantee to a meeting with the agency. Even if the former employee does not say anything at the meeting, he has made an appearance (although that appearance may or may not have been made with the intent to influence, depending on the circumstances).

Example 3 to paragraph (d): A Government employee administered a particular contract for agricultural research with Q Company. Upon termination of her Government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Government. At the request of a company vice president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort to increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause. She may do so.

Example 4 to paragraph (d): A former employee of the National Institutes of Health (NIH) prepares an application for an NIH research grant on behalf of her university employer. The application is signed and submitted by another university officer, but it lists the former employee as the principal investigator who will be responsible for the substantive work under the grant. He has not made a communication. He also may sign an assurance to the agency that he will be personally responsible for the direction and conduct of the research under the grant, pursuant to § 2641.201(e)(2)(iv). Moreover, he may personally communicate scientific or technological information to NIH concerning the application, provided that he does so under circumstances indicating no intent to influence the Government pursuant to § 2641.201(e)(2) or he makes the communication in accordance with the exception for scientific or technological information in § 2641.207(e).

Example 5 to paragraph (d): A former employee established a small government relations firm with a highly specialized practice in certain environmental compliance issues. She prepared a report for one of her clients, which she knew would be presented to her former agency by the client. The report is not signed by the former employee, but the document does bear the name of her firm. The former employee expects that it is commonly known throughout the industry and the agency that she is the author of the report. If the report were submitted to the agency, the former employee would be making a communication and not merely confining herself to behind-the-scenes assistance, because the circumstances indicate that she intended the information to be attributed to herself.

(e) *With the intent to influence*—(1) *Basic concept.* The prohibition applies only to communications or appearances made by a former Government employee with the intent to influence the United States. A communication or appearance is made with the intent to influence when made for the purpose of:

(i) Seeking a Government ruling, benefit, approval, or other discretionary Government action; or

(ii) Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy.

Example 1 to paragraph (e)(1): A former employee of the Administration on Children and Families (ACF) signs a grant application and submits it to ACF on behalf of a nonprofit organization for which she now works. She has made a communication with the intent to influence an employee of the United States because her communication was made for the purpose of seeking a Government benefit.

Example 2 to paragraph (e)(1): A former Government employee calls an agency official to complain about the auditing methods being used by the agency in connection with an audit of a Government contractor for which the former employee serves as a consultant. The former employee has made a communication with the intent to influence because his call was made for the purpose of seeking Government action in connection with an issue involving an appreciable element of dispute.

(2) *Intent to influence not present.* Certain communications to and appearances before employees of the United States are not made with the intent to influence, within the meaning of paragraph (e)(1) of this section, including, but not limited to, communications and appearances made solely for the purpose of:

(i) Making a routine request not involving a potential controversy, such as a request for publicly available documents or an inquiry as to the status of a matter;

(ii) Making factual statements or asking factual questions in a context that involves neither an appreciable element of dispute nor an effort to seek discretionary Government action, such as conveying factual information regarding matters that are not potentially controversial during the regular course of performing a contract;

(iii) Signing and filing the tax return of another person as preparer;

(iv) Signing an assurance that one will be responsible as principal investigator for the direction and conduct of research under a Federal grant (see example 4 to paragraph (d) of this section);

(v) Filing a Securities and Exchange Commission (SEC) Form 10–K or similar disclosure forms required by the SEC;

(vi) Making a communication, at the initiation of the Government, concerning work performed or to be performed under a Government contract or grant, during a routine Government site visit to premises owned or occupied by a person other than the United States where the work is performed or would be performed, in the ordinary course of evaluation, administration, or performance of an actual or proposed contract or grant; or

(vii) Purely social contacts (*See* example 4 to paragraph (f) of this section).

Example 1 to paragraph (e)(2): A former Government employee calls an agency to ask for the date of a scheduled public hearing on her client's license application. This is a routine request not involving a potential controversy and is not made with the intent to influence.

Example 2 to paragraph (e)(2): In the previous example, the agency's hearing calendar is quite full, as the agency has a significant backlog of license applications. The former employee calls a former colleague at the agency to ask if the hearing date for her client could be moved up on the schedule, so that her client can move forward with its business plans more quickly. This is a communication made with the intent to influence.

Example 3 to paragraph (e)(2): A former employee of the Department of Defense (DOD) now works for a firm that has a DOD contract to produce an operator's manual for a radar device used by DOD. In the course of developing a chapter about certain technical features of the device, the former employee asks a DOD official certain factual questions about the device and its properties. The discussion does not concern any matter that is known to involve a potential controversy between the agency and the contractor. The former employee has not made a communication with the intent to influence.

Example 4 to paragraph (e)(2): A former medical officer of the Food and Drug Administration (FDA) sends a letter to the agency in which he sets out certain data from safety and efficacy tests on a new drug for which his employer, ABC Drug Co., is seeking FDA approval. Even if the letter is confined to arguably ''factual'' matters, such as synopses of data from clinical trials, the communication is made for the purpose of obtaining a discretionary Government action, *i.e.*, approval of a new drug. Therefore, this is a communication made with the intent to influence.

Example 5 to paragraph (e)(2): A former Government employee now works for a management consulting firm, which has a Government contract to produce a study on the efficiency of certain agency operations. Among other things, the contract calls for the contractor to develop a range of alternative options for potential restructuring of certain internal Government procedures. The former employee would like to meet with agency representatives to present a tentative list of options developed by the contractor. She

may not do so. There is a potential for controversy between the Government and the contractor concerning the extent and adequacy of any options presented, and, moreover, the contractor may have its own interest in emphasizing certain options as opposed to others because some options may be more difficult and expensive for the contractor to develop fully than others.

Example 6 to paragraph (e)(2): A former employee of the Internal Revenue Service (IRS) prepares his client's tax return, signs it as preparer, and mails it to the IRS. He has not made a communication with the intent to influence. In the event that any controversy should arise concerning the return, the former employee may not represent the client in the proceeding, although he may answer direct factual questions about the records he used to compile figures for the return, provided that he does not argue any theories or positions to justify the use of one figure rather than another.

Example 7 to paragraph (e)(2): An agency official visits the premises of a prospective contractor to evaluate the testing procedure being proposed by the contractor for a research contract on which it has bid. A former employee of the agency, now employed by the contractor, is the person most familiar with the technical aspects of the proposed testing procedure. The agency official asks the former employee about certain technical features of the equipment used in connection with the testing procedure. The former employee may provide factual information that is responsive to the questions posed by the agency official, as such information is requested by the Government under circumstances for its convenience in reviewing the bid. However, the former employee may not argue for the appropriateness of the proposed testing procedure or otherwise advocate any position on behalf of the contractor.

(3) *Change in circumstances.* If, at any time during the course of a communication or appearance otherwise permissible under paragraph (e)(2) of this section, it becomes apparent that circumstances have changed which would indicate that any further communication or appearance would be made with the intent to influence, the former employee must refrain from such further communication or appearance.

Example 1 to paragraph (e)(3): A former Government employee accompanies the vice president of a company to a meeting with agency officials to convey test results called for under a Government contract. During the course of the meeting, an unexpected dispute arises concerning certain terms of the contract. The former employee may not participate in any discussion of this issue. Moreover, if the circumstances clearly indicate that even her continued presence during this discussion would be an appearance made with the intent to influence, she should excuse herself from the meeting.

(4) *Mere physical presence intended to influence.* Under some circumstances, a former employee's mere physical presence, without any communication by the employee concerning any material issue or otherwise, may constitute an appearance with the intent to influence an employee of the United States. Relevant considerations include such factors as whether:

(i) The former employee has been given actual or apparent authority to make any decisions, commitments, or substantive arguments in the course of the appearance;

(ii) The Government employee before whom the appearance is made has substantive responsibility for the matter and does not simply perform ministerial functions, such as the acceptance of paperwork;

(iii) The former employee's presence is relatively prominent;

(iv) The former employee is paid for making the appearance;

(v) It is anticipated that others present at the meeting will make reference to the views or past or present work of the former employee;

(vi) Circumstances do not indicate that the former employee is present merely for informational purposes, for example, merely to listen and record information for later use;

(vii) The former employee has entered a formal appearance in connection with a legal proceeding at which he is present; and

(viii) The appearance is before former subordinates or others in the same chain of command as the former employee.

Example 1 to paragraph (e)(4): A former Regional Administrator of the Occupational Safety and Health Administration (OSHA) becomes a consultant for a company being investigated for possible enforcement action by the regional OSHA office. She is hired by the company to coordinate and guide its response to the OSHA investigation. She accompanies company officers to an informal meeting with OSHA, which is held for the purpose of airing the company's explanation of certain findings in an adverse inspection report. The former employee is introduced at the meeting as the company's compliance and governmental affairs adviser but she does not make any statements during the meeting concerning the investigation. She is paid a fee for attending this meeting. She has made an appearance with the intent to influence.

Example 2 to paragraph (e)(4): A former employee of an agency now works for a manufacturer that seeks agency approval for a new product. The agency convenes a public advisory committee meeting for the purpose of receiving expert advice concerning the product. Representatives of the manufacturer will make an extended presentation of the data supporting the application for approval, and a special table has been reserved for them in the meeting room for this purpose. The former employee does not participate in the manufacturer's presentation to the advisory committee and does not even sit in the section designated for the manufacturer. Rather, he sits in the back of the room in a large area reserved for the public and the media. The manufacturer's speakers make no reference to the involvement or views of the former employee with respect to the matter. Even though the former employee may be recognized in the audience by certain agency employees, he has not made an appearance with the intent to influence because his presence is relatively inconspicuous and there is little to identify him with the manufacturer or the advocacy of its representatives at the meeting.

(f) *To or before an employee of the United States—(1) Employee of the United States.* For purposes of this paragraph, an ''employee of the United States'' means the President, the Vice President, and any current Federal employee (including an individual appointed as an employee or detailed to the Federal Government under the Intergovernmental Personnel Act (5 U.S.C. 3371–3376)) who is detailed to or employed by any:

(i) Agency (including a Government corporation);

(ii) Independent agency in the executive, legislative, or judicial branch;

(iii) Federal court; or

(iv) Court-martial.

(2) *To or before.* Except as provided in paragraph (f)(3) of this section, a communication ''to'' or appearance ''before'' an employee of the United States is one:

(i) Directed to and received by an entity specified in paragraphs (f)(1)(i) through (f)(1)(iv) of this section even though not addressed to a particular employee, *e.g.,* as when a former employee mails correspondence to an agency but not to any named employee; or

(ii) Directed to and received by an employee in his capacity as an employee of an entity specified in paragraphs (f)(1)(i) through (f)(1)(iv) of this section, *e.g.,* as when a former employee directs remarks to an employee representing the United States as a party or intervenor in a Federal or non-Federal judicial proceeding. A former employee does not direct his communication or appearance to a bystander who merely happens to overhear the communication or witness the appearance.

(3) *Public commentary.* (i) A former employee who addresses a public gathering or a conference, seminar, or similar forum as a speaker or panel participant will not be considered to be making a prohibited communication or appearance if the forum:

(A) Is not sponsored or co-sponsored by an entity specified in paragraphs (f)(1)(i) through (f)(1)(iv) of this section;

(B) Is attended by a large number of people; and

(C) A significant proportion of those attending are not employees of the United States.

(ii) In the circumstances described in paragraph (f)(3)(i) of this section, a former employee may engage in exchanges with any other speaker or with any member of the audience.

(iii) A former employee also may permit the broadcast or publication of a commentary provided that it is broadcast or appears in a newspaper, periodical, or similar widely available publication.

Example 1 to paragraph (f): A Federal Trade Commission (FTC) employee participated in the FTC's decision to initiate an enforcement proceeding against a particular company. After terminating Government service, the former employee is hired by the company to lobby key Members of Congress concerning the necessity of the proceeding. He may contact Members of Congress or their staff since a communication to or appearance before such persons is not made to or before an ''employee of the United States'' as that term is defined in paragraph (f)(1) of this section.

Example 2 to paragraph (f): In the previous example, the former FTC employee arranges to meet with a Congressional staff member to discuss the necessity of the proceeding. A current FTC employee is invited by the staff member to attend and is authorized by the FTC to do so in order to present the agency's views. The former employee may not argue his new employer's position at that meeting since his arguments would unavoidably be directed to the FTC employee in his capacity as an employee of the FTC.

Example 3 to paragraph (f): The Department of State granted a waiver pursuant to 18 U.S.C. 208(b)(1) to permit one of its employees to serve in his official capacity on the Board of Directors of a private association. The employee participates in a Board meeting to discuss what position the association should take concerning the award of a recent contract by the Department of Energy (DOE). When a former DOE employee addresses the Board to argue that the association should object to the award of the contract, she is directing her communication to a Department of State employee in his capacity as an employee of the Department of State.

Example 4 to paragraph (f): A Federal Communications Commission (FCC) employee participated in a proceeding to review the renewal of a license for a television station. After terminating Government service, he is hired by the company that holds the license. At a cocktail party, the former employee meets his former supervisor who is still employed by the FCC and begins to discuss the specifics of the license renewal case with him. The former employee is directing his communication to an FCC employee in his capacity as an employee of the FCC. Moreover, as the conversation concerns the license renewal matter, it is not a purely social contact and satisfies the element of the intent to influence the Government within the meaning of paragraph (e) of this section.

Example 5 to paragraph (f): A Department of Commerce employee participated in the negotiation of a proposed treaty with another country. After terminating Government service, she goes to work for a company that would be affected by the treaty. She is invited to speak about the pending negotiation at a conference sponsored by a trade association. The conference is attended by 100 individuals, 50 of whom are employees of entities specified in paragraphs (f)(1)(i)–(f)(1)(iv) of this section. The former employee may speak at the conference and may engage in a discussion of the merits of the treaty in response to a question posed by a Department of Agriculture employee in attendance.

Example 6 to paragraph (f): An employee of the Defense Base Closure and Realignment Commission participated in recommending that a particular military base be closed. After terminating Government service, the former employee may, on behalf of an organization with which he is affiliated, write and permit publication of an op-ed piece in a metropolitan newspaper in support of the recommendation to close that base.

Example 7 to paragraph (f): ABC Company has a contract with the Department of Energy which requires that contractor personnel work closely with agency employees in adjoining offices and work stations in the same building. After leaving the Department, a former employee goes to work for another corporation that has an interest in performing certain work related to the same contract, and he arranges a meeting with certain ABC employees at the building where he previously worked on the project. At the meeting, he asks the ABC employees to mention the interest of his new employer to the project supervisor, who is an agency employee. Moreover, he tells the ABC employees that they can say that he was the source of this information. The ABC employees in turn convey this information to the project supervisor. The former employee has made a communication to an employee of the Department of Energy. His communication is directed to an agency employee because he intended that the information be conveyed to an agency employee with the intent that it be attributed to himself, and the circumstances indicate such a close working relationship between contractor personnel and agency employees that it was likely that the information conveyed to contractor personnel would be received by the agency.

(g) *On behalf of any other person*—(1) *On behalf of.* (i) A former employee makes a communication or appearance on behalf of another person if the former employee is acting as the other person's agent or attorney or if:

(A) The former employee is acting with the consent of the other person, whether express or implied; and

(B) The former employee is acting subject to some degree of control or direction by the other person in relation to the communication or appearance.

(ii) A former employee does not act on behalf of another merely because his communication or appearance is consistent with the interests of the other person, is in support of the other person, or may cause the other person to derive a benefit as a consequence of the former employee's activity.

(2) *Any other person.* The term ''person'' is defined in § 2641.104. For purposes of this paragraph, the term excludes the former employee himself or any sole proprietorship owned by the former employee.

Example 1 to paragraph (g): An employee of the Bureau of Land Management (BLM) participated in the decision to grant a private company the right to explore for minerals on certain Federal lands. After retiring from Federal service to pursue her hobbies, the former employee becomes concerned that BLM is misinterpreting a particular provision of the lease. The former employee may contact a current BLM employee on her own behalf in order to argue that her interpretation is correct.

Example 2 to paragraph (g): The former BLM employee from the previous example later joins an environmental organization as an uncompensated volunteer. The leadership of the organization authorizes the former employee to engage in any activity that she believes will advance the interests of the organization. She makes a communication on behalf of the organization when, pursuant to this authority, she writes to BLM on the organization's letterhead in order to present an additional argument concerning the interpretation of the lease provision. Although the organization did not direct her to send the specific communication to BLM, the circumstances establish that she made the communication with the consent of the organization and subject to a degree of control or direction by the organization.

Example 3 to paragraph (g): An employee of the Administration for Children and Families wrote the statement of work for a cooperative agreement to be issued to study alternative workplace arrangements. After terminating Government service, the former employee joins a nonprofit group formed to promote family togetherness. He is asked by his former agency to attend a meeting in order to offer his recommendations concerning the ranking of the grant applications he had reviewed while still a Government employee. The management of the nonprofit group agrees to permit him to take leave to attend the meeting in order to present his personal views concerning the ranking of the applications. Although the former employee is a salaried employee of the non-profit group and his recommendations may be consistent with the group's interests, the circumstances establish that he did not make the communication pursuant to mutual consent.

Example 4 to paragraph (g): An Assistant Secretary of Defense participated in a meeting at which a defense contractor pressed Department of Defense (DOD) officials to continue funding the contractor's sole source contract to develop the prototype

of a specialized robot. After terminating Government service, the former Assistant Secretary approaches the contractor and suggests that she can convince her former DOD colleagues to pursue development of the prototype robot. The contractor agrees that the former Assistant Secretary's proposed efforts could be useful and asks her to set up a meeting with key DOD officials for the following week. Although the former Assistant Secretary is not an employee of the contractor, the circumstances establish that she is acting subject to some degree of control or direction by the contractor.

(h) *Particular matter involving a specific party or parties*— (1) *Basic concept.* The prohibition applies only to communications or appearances made in connection with a ''particular matter involving a specific party or parties.'' Although ''particular matter'' is defined broadly to include ''any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding,'' 18 U.S.C. 207(i)(3), such particular matters also must involve a specific party or parties in order to fall within the prohibition. These matters involve a specific activity or undertaking affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.

Example 1 to paragraph (h)(1): An employee of the Department of Housing and Urban Development approved a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that application as it is a particular matter involving specific parties in which she participated personally and substantially as a Government employee.

Example 2 to paragraph (h)(1): An attorney in the Department of Justice drafted provisions of a civil complaint that is filed in Federal court alleging violations of certain environmental laws by ABC Company. The attorney may not subsequently represent ABC before the Government in connection with the lawsuit, which is a particular matter involving specific parties.

Example 3 to paragraph (h)(1): A former Government employee seeks to represent a foreign government before an agency in connection with certain issues arising under a bilateral treaty that he helped to negotiate as a Government employee. He may not do so, if it is determined that the matter with respect to which he seeks to represent the foreign government is the same matter in which he previously participated as a Government employee. Although bilateral treaties may involve the adoption of broad national policies that do not focus specifically on the rights of any one person or company within the United States, such matters do involve specific parties, namely the United States and the foreign country, which are parties to a contract-like agreement. Note also that certain employees may be subject to additional restrictions with respect to trade and treaty negotiations or representation of a foreign entity, pursuant to 18 U.S.C. 207(b) and (f).

(2) *Matters of general applicability not covered.* Legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives, or other matters of general applicability are not particular matters involving specific parties.

Example 1 to paragraph (h)(2): A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation.

Example 2 to paragraph (h)(2): The former employee in the previous example also assisted MSHA in its defense of a lawsuit brought by a trade association challenging the same regulation. This lawsuit is a particular matter involving specific parties, and the former MSHA employee would be prohibited from representing the trade association or anyone else in connection with the case.

Example 3 to paragraph (h)(2): An employee of the National Science Foundation formulated policies for a grant program for organizations nationwide to produce science education programs targeting elementary school age children. She is not prohibited from later representing a specific organization in connection with its application for assistance under the program.

Example 4 to paragraph (h)(2): An employee in the legislative affairs office of the Immigration and Naturalization Service (INS) drafted official comments submitted to Congress with respect to a pending immigration reform bill. After leaving the Government, he contacts the White House on behalf of a private organization seeking to influence the administration to insist on certain amendments to the bill. This is not prohibited. Generally, legislation is not a particular matter involving specific parties. However, if the same employee had participated as an INS employee in formulating the agency's position on proposed private relief legislation granting citizenship to a specific individual, this matter would involve specific parties, and the employee would be prohibited from later making representational contacts in connection with this matter.

Example 5 to paragraph (h)(2): An employee of the Food and Drug Administration (FDA) drafted a proposed rule requiring all manufacturers of a particular type of medical device to obtain pre-market approval for their products. It was known at the time that only three or four manufacturers currently were marketing or developing such products. However, there was nothing to preclude other manufacturers from entering the market in the future. Moreover, the regulation on its face was not limited in application to those companies already known to be involved with this type of product at the time of promulgation. Because the proposed rule would apply to an open-ended class of manufacturers, not just specifically identified companies, it would not be a particular matter involving specific parties. After leaving Government, the former FDA employee would not be prohibited from representing a manufacturer in connection with the final rule or the application of the rule in any specific case.

Example 6 to paragraph (h)(2): A former agency attorney participated in drafting a standard form contract and certain standard terms and clauses for use in all future contracts. The adoption of a standard form and language for all contracts is a matter of general applicability, not a particular matter involving specific parties. Therefore, the attorney would not be prohibited from representing another person in a dispute involving the application of one of the standard terms or clauses in a specific contract in which he did not participate as a Government employee.

(3) *Specific parties at all relevant times.* The particular matter must involve specific parties both at the time the individual participated as a Government employee and at the time the former employee makes the communication or appearance, although the parties need not be identical at both times.

Example 1 to paragraph (h)(3): An employee of the Department of Defense (DOD) performed certain feasibility studies and other basic conceptual work for a possible innovation to a missile system. At the time she was involved in the matter, DOD had not identified any prospective contractors who might perform the work on the project. After she left Government, DOD issued a request for proposals to construct the new system, and she now seeks to represent one of the bidders in connection with this procurement. She may do so. Even though the procurement is a particular matter involving specific parties at the time of her proposed representation, no parties to the matter had been identified at the time she participated in the project as a Government employee.

Example 2 to paragraph (h)(3): A former employee in an agency inspector general's office conducted the first investigation of its kind concerning a particular fraudulent accounting practice by a grantee. This investigation resulted in a significant monetary recovery for the Government, as well as a settlement agreement in which the grantee agreed to use only certain specified accounting methods in the future. As a result of this case, the agency decided to issue a proposed rule expressly prohibiting the fraudulent accounting practice and requiring

all grantees to use the same accounting methods that had been developed in connection with the settlement agreement. The former employee may represent a group of grantees submitting comments critical of the proposed regulation. Although the proposed regulation in some respects evolved from the earlier fraud case, which did involve specific parties, the subsequent rulemaking proceeding does not involve specific parties.

(4) *Preliminary or informal stages in a matter.* When a particular matter involving specific parties begins depends on the facts. A particular matter may involve specific parties prior to any formal action or filings by the agency or other parties. Much of the work with respect to a particular matter is accomplished before the matter reaches its final stage, and preliminary or informal action is covered by the prohibition, provided that specific parties to the matter actually have been identified. With matters such as grants, contracts, and other agreements, ordinarily specific parties are first identified when initial proposals or indications of interest, such as responses to requests for proposals (RFP) or earlier expressions of interest, are received by the Government; in unusual circumstances, however, a prospective grant, contract, or agreement may involve specific parties even prior to the receipt of a proposal or expression of interest, if there are sufficient indicia that the Government has specifically identified a party.

Example 1 to paragraph (h)(4): A Government employee participated in internal agency deliberations concerning the merits of taking enforcement action against a company for certain trade practices. He left the Government before any charges were filed against the company. He has participated in a particular matter involving specific parties and may not represent another person in connection with the ensuing administrative or judicial proceedings against the company.

Example 2 to paragraph (h)(4): A former special Government employee (SGE) of the Agency for Health Care Policy and Research served, before leaving the agency, on a ''peer review'' committee that made a recommendation to the agency concerning the technical merits of specific grant proposal submitted by a university. The committee's recommendations are nonbinding and constitute only the first of several levels of review within the agency. Nevertheless, the SGE participated in a particular matter involving specific parties and may not represent the university in subsequent efforts to obtain the same grant.

Example 3 to paragraph (h)(4): Prior to filing a product approval application with a regulatory agency, a company sought guidance from the agency. The company provided specific information concerning the product, including its composition and intended uses, safety and efficacy data, and the results and designs of prior studies on the product. After a series of meetings, the agency advised the company concerning the design of additional studies that it should perform in order to address those issues that the agency still believed were unresolved. Even though no formal application had been filed, this was a particular matter involving specific parties. The agency guidance was sufficiently specific, and it was clearly intended to address the substance of a prospective application and to guide the prospective applicant in preparing an application that would meet approval requirements. An agency employee who was substantially involved in developing this guidance could not leave the Government and represent the company when it submits its formal product approval application.

Example 4 to paragraph (h)(4): A Government scientist participated in preliminary, internal deliberations about her agency's need for additional laboratory facilities. After she terminated Government service, the General Services Administration (GSA) issued a request for proposals (RFP) seeking private architectural services to design the new laboratory space for the agency. The former employee may represent an architectural firm in connection with its response to the RFP. During the preliminary stage in which the former employee participated, no specific architectural firms had been identified for the proposed work.

Example 5 to paragraph (h)(4): In the previous example, the proposed laboratory was to be an extension of a recently completed laboratory designed by XYZ Architectural Associates. From the very beginning of deliberations, both the agency and GSA were aware that the proposed laboratory extension posed unique architectural issues, intimately related to certain technical features of the original laboratory design, that might best be addressed by XYZ, which had specific experience and certain efficiencies resulting from its prior work. Before leaving the Government, the former employee participated in meetings in which these design issues and the ways in which XYZ might resolve them were discussed internally. Although XYZ was not contacted at this stage, and the ultimate procurement process would be open to all bidders, the agency had already identified XYZ as a likely qualified bidder based on the circumstances surrounding XYZ's recent involvement in a related matter. The former employee may not represent XYZ or any other competing contractor before the Government in connection with this matter.

(5) *Same particular matter.* The prohibition applies only to communications or appearances in connection with the same particular matter involving specific parties in which the former employee participated as a Government employee. The same particular matter may continue in another form or in part. In determining whether two particular matters involving specific parties are the same, all relevant factors should be considered, including the extent to which the matters involve the same basic facts, the same or related parties, related issues, the same confidential information, and the amount of time elapsed. With matters such as grants, contracts or other agreements, a new matter typically does not arise simply because there are amendments, modifications, or extensions, unless there are fundamental changes in objectives or the nature of the matter.

Example 1 to paragraph (h)(5): An employee drafted one provision of an agency contract to procure new software. After she left Government, a dispute arose under the same contract concerning a provision that she did not draft. She may not represent the contractor in this dispute. The contract as a whole is the particular matter involving specific parties and may not be fractionalized into separate clauses for purposes of avoiding the prohibition of 18 U.S.C. 207(a)(1).

Example 2 to paragraph (h)(5): A former special Government employee (SGE) recommended that his agency approve a new food additive made by Good Foods, Inc., on the grounds that it was proven safe for human consumption. The Healthy Food Alliance (HFA) sued the agency in Federal court to challenge the decision to approve the product. After leaving Government service, the former SGE may not serve as an expert witness on behalf of HFA in this litigation because it is a continuation of the same product approval matter in which he participated personally and substantially.

Example 3 to paragraph (h)(5): An employee of the Department of the Army negotiated and supervised a contract with Munitions, Inc. for four million mortar shells meeting certain specifications. After the employee left the Government, the Army sought a contract modification to add another one million shells. All specifications and contractual terms except price, quantity and delivery dates were identical to those in the original contract. The former Army employee may not represent Munitions in connection with this modification, because it is part of the same particular matter involving specific parties as the original contract.

Example 4 to the paragraph (h)(5): In the previous example, certain changes in technology occurred since the date of the original contract, and the proposed contract modifications would require the additional shells to incorporate new design features. Moreover, because of changes in the Army's internal system for storing and distributing shells to various locations, the modifications would require Munitions to deliver its product to several de-centralized destination points, thus requiring Munitions to develop novel delivery and handling systems and incur new transportation costs. The Army considers these modifications to be fundamental changes in the approach and objectives of the contract and may determine that these changes constitute a new particular matter.

Example 5 to paragraph (h)(5): A Government employee reviewed and approved certain wiretap applications. The

prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the original wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved.

(i) *Participated personally and substantially*— (1) Participate. To ''participate'' means to take an action as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, or to purposefully forbear in order to affect the outcome of a matter. An employee can participate in particular matters that are pending other than in his own agency. An employee does not participate in a matter merely because he had knowledge of its existence or because it was pending under his official responsibility. An employee does not participate in a matter within the meaning of this section unless he does so in his official capacity.

(2) *Personally.* To participate ''personally'' means to participate:

(i) Directly, either individually or in combination with other persons; or

(ii) Through direct and active supervision of the participation of any person he supervises, including a subordinate.

(3) *Substantially.* To participate ''substantially'' means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Provided that an employee participates in the substantive merits of a matter, his participation may be substantial even though his role in the matter, or the aspect of the matter in which he is participating, may be minor in relation to the matter as a whole. Participation in peripheral aspects of a matter or in aspects not directly involving the substantive merits of a matter (such as reviewing budgetary procedures or scheduling meetings) is not substantial.

Example 1 to paragraph (i): A General Services Administration (GSA) attorney drafted a standard form contract and certain standard terms and clauses for use in future contracts. A contracting officer uses one of the standard clauses in a subsequent contract without consulting the GSA attorney. The attorney did not participate personally in the subsequent contract.

Example 2 to paragraph (i): An Internal Revenue Service (IRS) attorney is neither in charge of nor does she have official responsibility for litigation involving a particular delinquent taxpayer. At the request of a co-worker who is assigned responsibility for the litigation, the lawyer provides advice concerning strategy during the discovery stage of the litigation. The IRS attorney participated personally in the litigation.

Example 3 to paragraph (i): The IRS attorney in the previous example had no further involvement in the litigation. She participated substantially in the litigation notwithstanding that the post-discovery stages of the litigation lasted for ten years after the day she offered her advice.

Example 4 to paragraph (i): The General Counsel of the Office of Government Ethics (OGE) contacts the OGE attorney who is assigned to evaluate all requests for ''certificates of divestiture'' to check on the status of the attorney's work with respect to all pending requests. The General Counsel makes no comment concerning the merits or relative importance of any particular request. The General Counsel did not participate in any particular request when she checked on the status of all pending requests.

Example 5 to paragraph (i): The OGE attorney in the previous example completes his evaluation of a particular certificate of divestiture request and forwards his recommendation to the General Counsel. The General Counsel forwards the package to the Director of OGE with a note indicating her concurrence with the attorney's recommendation. The General Counsel participated substantially in the request.

Example 6 to paragraph (i): An International Trade Commission (ITC) computer programmer developed software designed to analyze data related to unfair trade practice complaints. At the request of an ITC employee who is considering the merits of a particular complaint, the programmer enters all the data supplied to her, runs the computer program, and forwards the results to the employee who will make a recommendation to an ITC Commissioner concerning the disposition of the complaint. The programmer did not participate substantially in the complaint.

(j) *United States is a party or has a direct and substantial interest*—(1) *United States.* For purposes of this paragraph, the ''United States'' means:

(i) The executive branch (including a Government corporation);

(ii) The legislative branch; or

(iii) The judicial branch.

(2) *Party or direct and substantial interest.* The United States may be a party to or have a direct and substantial interest in a particular matter even though it is pending in a non-Federal forum, such as a State court. The United States is neither a party to nor does it have a direct and substantial interest in a particular matter merely because a Federal statute is at issue or a Federal court is serving as the forum for resolution of the matter. When it is not clear whether the United States is a party to or has a direct and substantial interest in a particular matter, this determination shall be made in accordance with the following procedure:

(i) *Coordination by designated agency ethics official.* The designated agency ethics official (DAEO) for the former employee's agency shall have the primary responsibility for coordinating this determination. When it appears likely that a component of the United States Government other than the former employee's former agency may be a party to or have a direct and substantial interest in the particular matter, the DAEO shall coordinate with agency ethics officials serving in those components.

(ii) *Agency determination.* A component of the United States Government shall determine if it is a party to or has a direct and substantial interest in a matter in accordance with its own internal procedures. It shall consider all relevant factors, including whether:

(A) The component has a financial interest in the matter;

(B) The matter is likely to have an effect on the policies, programs, or operations of the component;

(C) The component is involved in any proceeding associated with the matter, *e.g.,* as by having provided witnesses or documentary evidence; and

(D) The component has more than an academic interest in the outcome of the matter.

§ 2641.202 Two-year restriction on any former employee's representations to United States concerning particular matter for which the employee had official responsibility [18 U.S.C. 207(a)(2)].

(a) *Basic prohibition of 18 U.S.C. 207(a)(2).* For two years after his Government service terminates, no former employee shall knowingly, with the intent to influence, make any communication to or appearance before an employee of the United States on behalf of any other person in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his official responsibility within the one-year period prior to the termination of his Government service.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(a)(2) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(4) Testifying under oath. *See* § 2641.301(f).

(5) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(6) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(a)(2) is a two-year restriction that commences upon an employee's termination from Government service. *See* example 9 to paragraph (j) of this section.

(d) *Communication or appearance. See* § 2641.201(d).

(e) *With the intent to influence. See* § 2641.201(e).

(f) *To or before an employee of the United States. See* § 2641.201(f).

(g) *On behalf of any other person. See* § 2641.201(g).

(h) *Particular matter involving a specific party or parties. See* § 2641.201(h).

(i) *United States is a party or has a direct and substantial interest. See* § 2641.201(j).

(j) *Official responsibility*—(1) *Definition.* ''Official responsibility'' means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action. Ordinarily, the scope of an employee's official responsibility is determined by those functions assigned by statute, regulation, Executive order, job description, or delegation of authority. All particular matters under consideration in an agency are under the official responsibility of the agency head and each is under that of any intermediate supervisor who supervises a person, including a subordinate, who actually participates in the matter or who has been assigned to participate in the matter within the scope of his official duties. A nonsupervisory employee does not have official responsibility for his own assignments within the meaning of section 207(a)(2). Authority to direct Government action concerning only ancillary or nonsubstantive aspects of a matter, such as budgeting, equal employment, scheduling, or format requirements does not, ordinarily, constitute official responsibility for the matter as a whole.

(2) *Actually pending.* A matter is actually pending under an employee's official responsibility if it has been referred to the employee for assignment or has been referred to or is under consideration by any person he supervises, including a subordinate. A matter remains pending even when it is not under ''active'' consideration. There is no requirement that the matter must have been pending under the employee's official responsibility for a certain length of time.

(3) *Temporary duties.* An employee ordinarily acquires official responsibility for all matters within the scope of his position immediately upon assuming the position. However, under certain circumstances, an employee who is on detail (or other temporary assignment) to a position or who is serving in an ''acting'' status might not be deemed to have official responsibility for any matter by virtue of such temporary duties. Specifically, an employee performing such temporary duties will not thereby acquire official responsibility for matters within the scope of the position where he functions only in a limited ''caretaker'' capacity, as evidenced by such factors as:

(i) Whether the employee serves in the position for no more than 60 consecutive calendar days;

(ii) Whether there is actually another incumbent for the position, who is temporarily absent, for example, on travel or leave;

(iii) Whether there has been no event triggering the provisions of 5 U.S.C. 3345(a); and

(iv) Whether there are any other circumstances indicating that, given the temporary nature of the detail or acting status, there was no reasonable expectation of the full authority of the position.

(4) *Effect of leave status.* The scope of an employee's official responsibility is not affected by annual leave, terminal leave, sick leave, excused absence, leave without pay, or similar absence from assigned duties.

(5) *Effect of disqualification.* Official responsibility for a matter is not eliminated through self-disqualification or avoidance of personal participation in a matter, as when an employee is disqualified from participating in a matter in accordance with subparts D, E, or F of 5 CFR part 2635 or part 2640. Official responsibility for a matter can be terminated by a formal modification of an employee's responsibilities, such as by a change in the employee's position description.

(6) *One-year period before termination.* Section 207(a)(2) applies only with respect to a particular matter that was actually pending under the former employee's official responsibility:

(i) At some time when the matter involved a specific party or parties; and

(ii) Within his last year of Government service.

(7) *Knowledge of official responsibility.* A communication or appearance is not prohibited unless, at the time of the proposed post-employment communication or appearance, the former employee knows or reasonably should know that the matter was actually pending under his official responsibility within the one-year period prior to his termination from Government service. It is not necessary that a former employee have known during his Government service that the matter was actually pending under his official responsibility.

Note to paragraph (j): 18 U.S.C. 207(a)(2) requires only that the former employee ''reasonably should know'' that the matter was pending under his official responsibility. Consequently, when the facts suggest that a particular matter involving specific parties could have been actually pending under his official responsibility, a former employee should seek information from an agency ethics official or other Government official to clarify his role in the matter. *See* the definition of agency ethics official in § 2641.105.

Example 1 to paragraph (j): An Assistant Secretary of State's position description specifies that he is responsible for a certain class of treaty negotiations. These negotiations are handled by an office under his supervision. As a practical matter, however, the Assistant Secretary has not become involved with any treaty negotiation of this type. The Assistant Secretary has official responsibility for all such treaty negotiations as specified in his position description.

Example 2 to paragraph (j): A budget officer at the National Oceanic and Atmospheric Administration (NOAA) is asked to review NOAA's budget to determine if there are funds still available for the purchase of a new hurricane tracking device. The budget officer does not have official responsibility for the resulting contract even though she is responsible for all budget matters within the agency. The identification of funds for the contract is an ancillary aspect of the contract.

Example 3 to paragraph (j): An Internal Revenue Service (IRS) auditor worked in the office responsible for the tax-exempt status of nonprofit organizations. Subsequently, he was transferred to the IRS office concerned with public relations. When contacted by an employee of his former office for advice concerning a matter involving a certain nonprofit organization, the auditor provides useful suggestions. The auditor's supervisor

in the public relations office does not have official responsibility for the nonprofit matter since it does not fall within the scope of the auditor's current duties.

Example 4 to paragraph (j): An information manager at the Central Intelligence Agency (CIA) assigns a nonsupervisory subordinate to research an issue concerning a request from a news organization for information concerning past agency activities. Before she commences any work on the assignment, the subordinate terminates employment with the CIA. The request was not pending under the subordinate's official responsibility since a non-supervisory employee does not have official responsibility for her own assignments. (Once the subordinate commences work on the assignment, she may be participating ''personally and substantially'' within the meaning of 18 U.S.C. 207(a)(1) and § 2641.201(i).)

Example 5 to paragraph (j): A regional employee of the Federal Emergency Management Agency requests guidance from the General Counsel concerning a contractual dispute with Baker Company. The General Counsel immediately assigns the matter to a staff attorney whose workload can accommodate the assignment, then retires from Government two days later. Although the staff attorney did not retrieve the assignment from his in-box prior to the General Counsel's departure, the Baker matter was actually pending under the General Counsel's official responsibility from the time the General Counsel received the request for guidance.

Example 6 to paragraph (j): A staff attorney in the Federal Emergency Management Agency's Office of General Counsel is consulted by procurement officers concerning the correct resolution of a contractual matter involving Able Company. The attorney renders an opinion resolving the question. The same legal question arises later in several contracts with other companies but none of the disputes with such companies is referred to the Office of General Counsel. The General Counsel had official responsibility for the determination of the Able Company matter but the subsequent matters were never actually pending under his official responsibility.

Example 7 to paragraph (j): An employee of the National Endowment for the Humanities becomes ''acting'' Division Director of the Division of Education Programs when the Division Director is away from the office for three days to attend a conference. During those three days, the employee has authority to direct Government action in connection with many matters with which she ordinarily would have no involvement. However, in view of the brief time period and the fact that there remains an incumbent in the position of Division Director, the agency ethics official properly may determine that acting official did not acquire official responsibility for all matters then pending in the Division.

Example 8 to paragraph (j): A division director at the Food and Drug Administration disqualified himself from participating in the review of a drug for Alzheimer's disease, in accordance with subpart E of 5 CFR part 2635, because his brother headed the private sector team which developed the drug. The matter was instead assigned to the division director's deputy. The director continues to have official responsibility for review of the drug. The division director also would have retained official responsibility for the matter had he either asked his supervisor or another division director to oversee the matter.

Example 9 to paragraph (j): The Deputy Secretary of a department terminates Government service to stay home with her newborn daughter. Four months later, she returns to the department to serve on an advisory committee as a special Government employee (SGE). After three months, she terminates Government service once again in order to accept a part-time position with a public relations firm. The 18 U.S.C. 207(a)(2) bar commences when she resigns as Deputy Secretary and continues to run for two years. (Any action taken in carrying out official duties as a member of the advisory committee would be undertaken on behalf of the United States and would, therefore, not be restricted by 18 U.S.C 207(a)(2). *See* § 2641.301(a).) A second two-year restriction commences when she terminates from her second period of Government service but it applies only with respect to any particular matter actually pending under her official responsibility during her three-month term as an SGE.

§ 2641.203 One-year restriction on any former employee's representations, aid, or advice concerning ongoing trade or treaty negotiation [18 U.S.C. 207(b)].

(a) *Basic prohibition of 18 U.S.C. 207(b).* For one year after his Government service terminates, no former employee shall knowingly represent, aid, or advise on the basis of ''covered information,'' any other person concerning an ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee. ''Covered information'' refers to agency records which were accessible to the employee which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(b) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Testifying under oath. *See* § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(5) Acting as an employee at a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(b) commences upon an employee's termination from Government service. The restriction lasts for one year or until the termination of the negotiation, whichever occurs first.

(d) *Represent, aid, or advise.* [Reserved]

(e) *Any other person.* [Reserved]

(f) *On the basis of.* [Reserved]

(g) *Covered Information.* [Reserved]

(h) *Ongoing trade or treaty negotiation.* [Reserved]

(i) *Participated personally and substantially.* [Reserved]

§ 2641.204 One-year restriction on any former senior employee's representations to former agency concerning any matter, regardless of prior involvement [18 U.S.C. 207(c)].

(a) *Basic prohibition of 18 U.S.C. 207(c).* For one year after his service in a senior position terminates, no former senior employee may knowingly, with the intent to influence, make any communication to or appearance before an employee of an agency in which he served in any capacity within the one-year period prior to his termination from a senior position, if that communication or appearance is made on behalf of any other person in connection with any matter on which the former senior employee seeks official action by any employee of such agency. An individual who served in a ''very senior employee'' position is subject to the broader one-year restriction set forth in 18 U.S.C. 207(d) in lieu of that set forth in section 207(c). *See* § 2641.205.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(c) does not apply to a former senior employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Acting on behalf of specified entities. *See* § 2641.301(c).

(4) Making uncompensated statements based on special knowledge. *See* § 2641.301(d).

(5) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(6) Testifying under oath. *See* § 2641.301(f).

(7) Acting on behalf of a candidate or political party. *See* § 2641.301(g).

(8) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(9) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(10) Subject to a waiver issued for certain positions. *See* § 2641.301(j).

(c) *Applicability to special Government employees and Intergovernmental Personnel Act appointees or detailees—(1) Special Government employees.* (i) 18 U.S.C. 207(c) applies to an individual as a result of service as a special Government employee (SGE) who:

(A) Served in a senior employee position while serving as an SGE; and

(B) Served 60 or more days as an SGE during the one-year period before terminating service as a senior employee.

(ii) Any day on which work is performed shall count toward the 60-day threshold without regard to the number of hours worked that day or whether the day falls on a weekend or holiday. For purposes of determining whether an SGE's rate of basic pay is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service, within the meaning of the definition of senior employee in § 2641.104, the employee's hourly rate of pay (or daily rate divided by eight) shall be multiplied by 2087, the number of Federal working hours in one year. (In the case of a Reserve officer of the Armed Forces or an officer of the National Guard who is an SGE serving in a senior employee position, 18 U.S.C. 207(c) applies if the officer served 60 or more days as an SGE within the one-year period prior to his termination from a period of active duty or active duty for training.)

(2) *Intergovernmental Personnel Act appointees or detailees.* 18 U.S.C. 207(c) applies to an individual serving as a senior employee pursuant to an appointment or detail under the Intergovernmental Personnel Act, 5 U.S.C. 3371–3376. An individual is a senior employee if he received total pay from Federal or non-Federal sources equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service (exclusive of any reimbursement for a non-Federal employer's share of benefits not paid to the employee as salary), and:

(i) The individual served in a Federal position ordinarily compensated at a rate equal to or greater than level 5 of the Senior Executive Service, regardless of what portion of the pay is derived from Federal expenditures or expenditures by the individual's non-Federal employer;

(ii) The individual received a direct Federal payment, pursuant to 5 U.S.C. 3374(c)(1), that supplemented the salary that he received from his non-Federal employer; or

(iii) The individual's non-Federal employer received Federal reimbursement equal to or greater than the amount of basic pay payable for level 5 of the Senior Executive Service.

Example 1 to paragraph (c): An employee of a private research institution serves on an advisory committee that convenes periodically to discuss United States policy on foreign arms sales. The expert is compensated at a daily rate which is the equivalent of the rate of basic pay payable to a full-time employee for level 5 of the Senior Executive Service. The individual serves two hours per day for 65 days before resigning from the advisory committee nine months later. The individual becomes subject to 18 U.S.C. 207(c) when she resigns from the advisory committee since she served 60 or more days as a special Government employee during the one-year period before terminating service as a senior employee.

Example 2 to paragraph (c): An individual is detailed from a university to a Federal department under the Intergovernmental Personnel Act to do work that had previously been performed by a GS–15 employee. While on detail, the individual continues to receive pay from the university in an amount $5,000 less than the rate of basic pay payable for level 5 of the Senior Executive Service (SES). In addition, the department pays a $25,000 supplement directly to the individual, as authorized by 5 U.S.C. 3374(c)(1). Since the employee's total pay is equal to or greater than the rate of basic pay payable for level 5 of the SES, and a portion of that compensation is paid directly to the individual by the department, he becomes subject to 18 U.S.C 207(c) when his detail ends.

(d) *Commencement and length of restriction.* 18 U.S.C. 207(c) is a one-year restriction. The one-year period is measured from the date when the employee ceases to serve in a senior employee position, not from the termination of Government service, unless the two events occur simultaneously. (In the case of a Reserve officer of the Armed Forces or an officer of the National Guard who is a special Government employee serving in a senior employee position, section 207(c) is measured from the date when the officer terminates a period of active duty or active duty for training.)

Example 1 to paragraph (d): An employee at the Department of Labor (DOL) serves in a senior employee position. He then accepts a GS–15 position at the Federal Labor Relations Authority (FLRA) but terminates Government service six months later to accept a job with private industry. 18 U.S.C. 207(c) commences when he ceases to be a senior employee at DOL, even though he does not terminate Government service at that time. (Any action taken in carrying out official duties on behalf of FLRA while still employed by that agency would be undertaken on behalf of the United States and would, therefore, not be restricted by section 207(c). *See* § 2641.301(a).)

Example 2 to paragraph (d): In the previous example, the DOL employee accepts a senior employee position at FLRA rather than a GS–15 position. The bar of 18 U.S.C. 207(c) commences when, six months later, he terminates service in the second senior employee position to accept a job with private industry. (The bar will apply with respect to both the DOL and FLRA. *See* paragraph (g) of § 2641.204 and examples 2 and 3 to that paragraph).

(e) *Communication or appearance. See* § 2641.201(d).

(f) *With the intent to influence. See* § 2641.201(e).

(g) *To or before employee of former agency*—(1) *Employee.* For purposes of this paragraph, a former senior employee may not contact:

(i) Any current Federal employee of the former senior employee's ''former agency'' as defined in paragraph (g)(2) of this section;

(ii) An individual detailed under the Intergovernmental Personnel Act (5 U.S.C. 3371–3376) to the former senior employee's former agency;

(iii) An individual detailed to the former senior employee's former agency from another agency;

(iv) An individual serving with the former senior employee's former agency as a collateral duty pursuant to statute or Executive order; and

(v) In the case of a communication or appearance made by a former senior employee who is barred by 18 U.S.C. 207(c) from communicating to or appearing before the Executive Office of the President, the President and Vice President.

(2) *Former agency.* The term ''agency'' is defined in § 2641.104. Unless eligible to benefit from the designation of distinct and separate agency components as described in § 2641.302, a former senior employee's former agency will ordinarily be considered to be the whole of any larger agency of which his former agency was a part on the date he terminated senior service.

(i) *One-year period before termination.* 18 U.S.C. 207(c) applies with respect to agencies in which the former senior employee served within the one-year period prior to his termination from a senior employee position.

(ii) *Served in any capacity.* Once the restriction commences, 18 U.S.C. 207(c) applies with respect to any agency in which the former senior employee served in any capacity during the one-year period, regardless of his position, rate of basic pay, or pay grade.

(iii) *Multiple Assignments.* An employee can simultaneously serve in more than one agency. A former senior employee will be considered to have

served in his own employing entity and in any entity to which he was detailed for any length of time or with which he was required to serve as a collateral duty pursuant to statute or Executive order.

(iv) *Effect of organizational changes.* If a former senior employee's former agency has been significantly altered by organizational changes after his termination from senior service, it may be necessary to determine whether a successor entity is the same agency as the former senior employee's former agency. The appropriate designated agency ethics official, in consultation with the Office of Government Ethics, shall identify the entity that is the individual's former agency. Whether a successor entity is the same as the former agency depends upon whether it has substantially the same organizational mission, the extent of the termination or dispersion of the agency's functions, and other factors as may be appropriate.

(A) *Agency abolished or substantially changed.* If a successor entity is not identifiable as substantially the same agency from which the former senior employee terminated, the 18 U.S.C. 207(c) prohibition will not bar communications or appearances by the former senior employee to that successor entity.

(B) *Agency substantially the same.* If a successor entity remains identifiable as substantially the same entity from which the former senior employee terminated, the 18 U.S.C. 207(c) bar will extend to the whole of the successor entity.

(C) *Employing entity is made separate.* If an employing entity is made separate from an agency of which it was a part, but it remains identifiable as substantially the same entity from which the former senior employee terminated senior service before the entity was made separate, the 18 U.S.C 207(c) bar will apply to a former senior employee of that entity only with respect to the new separate entity.

(D) *Component designations.* If a former senior employee's former agency was a designated ''component'' within the meaning of § 2641.302 on the date of his termination as senior employee, see § 2641.302(g).

(3) *To or before.* Except as provided in paragraph (g)(4) of this section, a communication ''to'' or appearance ''before'' an employee of a former senior employee's former agency is one:

(i) Directed to and received by the former senior employee's former agency, even though not addressed to a particular employee; or

(ii) Directed to and received by an employee in his capacity as an employee of a former senior employee's former agency including in his capacity as an employee serving in the agency on detail or, if pursuant to statute or Executive order, as a collateral duty. A former senior employee does not direct his communication or appearance to a bystander who merely happens to overhear the communication or witness the appearance.

(4) *Public commentary.* (i) A former senior employee who addresses a public gathering or a conference, seminar, or similar forum as a speaker or panel participant will not be considered to make a prohibited communication or appearance if the forum:

(A) Is not sponsored or co-sponsored by the former senior employee's former agency;

(B) Is attended by a large number of people; and

(C) A significant proportion of those attending are not employees of the former senior employee's former agency.

(ii) In the circumstances described in paragraph (g)(4)(i) of this section, a former senior employee may engage in exchanges with any other speaker or with any member of the audience.

(iii) A former senior employee also may permit the broadcast or publication of a commentary provided that it is broadcast or appears in a newspaper, periodical, or similar widely-available publication.

Example 1 to paragraph (g): Two months after retiring from a senior employee position at the United States Department of Agriculture (USDA), the former senior employee is asked to represent a poultry producer in a compliance matter involving the producer's storage practices. The former senior employee may not represent the poultry producer before a USDA employee in connection with the compliance matter or any other matter in which official action is sought from the USDA. He has ten months remaining of the one-year bar which commenced upon his termination as a senior employee with the USDA.

Example 2 to paragraph (g): An individual serves for several years at the Commodity Futures Trading Commission (CFTC) as a GS–15. With no break in service, she then accepts a senior employee position at the Export-Import Bank of the United States (Ex-Im Bank) where she remains for nine months until she leaves Government service in order to accept a position in the private sector. Since the individual served in both the CFTC and the Ex-Im Bank within her last year of senior service, she is barred by 18 U.S.C. 207(c) as to both agencies for one year commencing from her termination from the senior employee position at the Ex-Im Bank.

Example 3 to paragraph (g): An individual serves for several years at the Securities and Exchange Commission (SEC) in a senior employee position. He terminates Government service in order to care for his parent who is recovering from heart surgery. Two months later, he accepts a senior employee position at the Overseas Private Investment Corporation (OPIC) where he remains for nine months until he leaves Government service in order to accept a position in the private sector. The 18 U.S.C. 207(c) bar commences when he resigns from the SEC and continues to run for one year. (Any action taken in carrying out official duties as an employee of OPIC would be undertaken on behalf of the United States and would, therefore, not be restricted by section 207(c). *See* § 2641.301(a).) A second one-year restriction commences when he resigns from OPIC. The second restriction will apply with respect to OPIC only. Upon his termination from the OPIC position, he will have one remaining month of the section 207(c) restriction arising from his termination of his SEC position. This remaining month of restriction will run concurrently with the first month of the one-year OPIC restriction.

Example 4 to paragraph (g): An architect serves in a senior employee position in the Agency for Affordable Housing. Subsequent to her termination from the position, the agency is abolished and its functions are distributed among three other agencies within three departments, the Department of Housing and Urban Development, the Department of the Interior, and the Department of Justice. None of these successor entities is identifiable as substantially the same entity as the Agency for Affordable Housing, and, accordingly, the 18 U.S.C 207(c) bar will not apply to the architect.

(h) *On behalf of any other person. See* § 2641.201(g).

(i) *Matter on which former senior employee seeks official action*—(1) *Seeks official action.* A former senior employee seeks official action when the circumstances establish that he is making his communication or appearance for the purpose of inducing a current employee, as defined in paragraph (g) of this section, to make a decision or to otherwise act in his official capacity.

(2) *Matter.* The prohibition on seeking official action applies with respect to any matter, including:

(i) Any ''particular matter involving a specific party or parties'' as defined in § 2641.201(h);

(ii) The consideration or adoption of broad policy options that are directed to a large and diverse group of persons;

(iii) A new matter that was not previously pending at or of interest to the former senior employee's former agency; and

(iv) A matter pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch.

Example 1 to paragraph (i): A former senior employee at the National Capital Planning Commission (NCPC) wishes to

contact a friend who still works at the NCPC to solicit a donation for a local charitable organization. The former senior employee may do so since the circumstances establish that he would not be making the communication for the purpose of inducing the NCPC employee to make a decision in his official capacity about the donation.

Example 2 to paragraph (i): A former senior employee at the Department of Defense wishes to contact the Secretary of Defense to ask him if he would be interested in attending a cocktail party. At the party, the former senior employee would introduce the Secretary to several of the former senior employee's current business clients who have sought the introduction. The former senior employee and the Secretary do not have a history of socializing outside the office, the Secretary is in a position to affect the interests of the business clients, and all expenses associated with the party will be paid by the former senior employee's consulting firm. The former senior employee should not contact the Secretary. The circumstances do not establish that the communication would be made other than for the purpose of inducing the Secretary to make a decision in his official capacity about the invitation.

Example 3 to paragraph (i): A former senior employee at the National Science Foundation (NSF) accepts a position as vice president of a company that was hurt by recent cuts in the defense budget. She contacts the NSF's Director of Legislative and Public Affairs to ask the Director to contact a White House official in order to press the need for a new science policy to benefit her company. The former senior employee made a communication for the purpose of inducing the NSF employee to make a decision in his official capacity about contacting the White House.

§ 2641.205 One-year restriction on any former very senior employee's representations to former agency or certain officials concerning any matter, regardless of prior involvement [18 U.S.C. 207(d)].

(a) *Basic prohibition of 18 U.S.C. 207(d).* For one year after his service in a very senior employee position terminates, no former very senior employee shall knowingly, with the intent to influence, make any communication to or appearance before any official appointed to an Executive Schedule position listed in 5 U.S.C. 5312–5316 or before any employee of an agency in which he served as a very senior employee within the one-year period prior to his termination from a very senior employee position, if that communication or appearance is made on behalf of any other person in connection with any matter on which the former very senior employee seeks official action by any official or employee.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(d) does not apply to a former very senior employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Acting on behalf of specified entities. *See* § 2641.301(c).

(4) Making uncompensated statements based on special knowledge. *See* § 2641.301(d).

(5) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(6) Testifying under oath. *See* § 2641.301(f).

(7) Acting on behalf of a candidate or political party. *See* § 2641.301(g).

(8) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(9) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(d) is a one-year restriction. The one-year period is measured from the date when the employee ceases to serve in a very senior employee position, not from the termination of Government service, unless the two events occur simultaneously. *See* examples 1 and 2 to paragraph (d) of § 2641.204.

(d) *Communication or appearance. See* § 2641.201(d).

(e) *With the intent to influence. See* § 2641.201(e).

(f) *To or before employee of former agency. See* § 2641.204(g), except that this section covers only former very senior employees and applies only with respect to the agency or agencies in which a former very senior employee served as a very senior employee, and very senior employees do not benefit from the designation of distinct and separate agency components as referenced in § 2641.204(g)(2).

(g) *To or before an official appointed to an Executive Schedule position. See* § 2641.204(g)(3) for ''to or before,'' except that this section covers only former very senior employees and also extends to a communication or appearance before any official currently appointed to a position that is listed in sections 5 U.S.C. 5312–5316. A communication made to an official described in 5 U.S.C. 5312–5316 can include a communication to a subordinate of such official with the intent that the information be conveyed directly to the official and attributed to the former very senior employee.

(h) *On behalf of any other person. See* § 2641.201(g).

(i) *Matter on which former very senior employee seeks official action. See* § 2641.204(i), except that this section only covers former very senior employees.

Example 1 to § 2641.205: The former Attorney General may not contact the Assistant Attorney General of the Antitrust Division on behalf of a professional sports league in support of a proposed exemption from certain laws, nor may he contact the Secretary of Labor. He may, however, speak directly to the President or Vice President concerning the issue.

Example 2 to § 2641.205: The former White House Chief of Staff is now the Chief Executive Officer of a major computer firm and wishes to convince the new Administration to change its new policy concerning computer chips. The former Chief of Staff may contact an employee of the Department of Commerce who, although paid at a level fixed according to level III of the Executive Schedule, does not occupy a position actually listed in 5 U.S.C. 5312–5316. She could not contact an employee working in the Office of the United States Trade Representative, an office within the Executive Office of the President (her former agency).

Example 3 to § 2641.205: A senior employee serves in the Department of Agriculture for several years. He is then appointed to serve as the Secretary of Health and Human Services (HHS) but resigns seven months later. Since the individual served as a very senior employee only at HHS, he is barred for one year by 18 U.S.C. 207(d) as to any employee of HHS and any official currently appointed to an Executive Schedule position listed in 5 U.S.C. 5312–5316, including any such official serving in the Department of Agriculture. (In addition, a one-year section 207(c) bar commenced when he terminated service as a senior employee at the Department of Agriculture.)

Example 4 to § 2641.205: The former Secretary of the Department of Labor may not represent another person in a meeting with the current Secretary of Transportation to discuss a proposed regulation on highway safety standards.

Example 5 to § 2641.205: In the previous example, the former very senior employee would like to meet instead with the special assistant to the Secretary of Transportation. The former employee knows that the special assistant has a close working relationship with the Secretary, and he expects that the special assistant will brief the Secretary about any discussions at the proposed meeting. The former very senior employee may not meet with the assistant.

§ 2641.206 One-year restriction on any former senior or very senior employee's representations on behalf of, or aid or advice to, a foreign entity [18 U.S.C. 207(f)].

(a) *Basic prohibition of 18 U.S.C. 207(f).* For one year after service in a senior or very senior employee position terminates, no former senior employee or former very senior employee shall knowingly, with the intent to influence a decision of an employee of an agency of the United States, represent, aid, or

advise a foreign government or foreign political party.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(f) does not apply to a former senior or former very senior employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a). (Note, however, the limitation in § 2641.301(a)(2)(ii).)

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Testifying under oath. *See* § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(5) Acting as an employee of a Governmentowned, contractor operated entity pursuant to a waiver. *See* § 2641.301(i).

(6) Subject to a waiver issued for certain positions. *See* § 2641.301(j).

(c) *Commencement and length of restriction*—(1) *Generally.* Except as provided in paragraph (c)(2) of this section, 18 U.S.C. 207(f) is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior or very senior employee, not from the termination of Government service, unless the two occur simultaneously. *See* example 1 to paragraph (d) of § 2641.204.

(2) *U.S. Trade Representative or Deputy U.S. Trade Representative.* 18 U.S.C. 207(f) is a permanent restriction as applied to a former U.S. Trade Representative or Deputy U.S. Trade Representative.

(d) *Represent, aid, or advise.* [Reserved]

(e) *With the intent to influence.* [Reserved]

(f) *Decision of employee of an agency.* [Reserved]

(g) *Foreign entity.* [Reserved]

Subpart C—Exceptions, Waivers and Separate Components

§ 2641.301 Statutory exceptions and waivers.

(a) *Exception for acting on behalf of United States.* A former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from engaging in any activity on behalf of the United States.

(1) *United States.* For purposes of this paragraph, the term ''United States'' means:

(i) The executive branch (including a Government corporation);

(ii) The legislative branch; or

(iii) The judicial branch.

(2) *On behalf of the United States.* A former employee will be deemed to engage in the activity on behalf of the United States if he acts in accordance with paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(i) *As employee of the United States.* A former employee engages in an activity on behalf of the United States when he carries out official duties as a current employee of the United States.

(ii) *As other than employee of the United States.* (A) Provided that he does not represent, aid, or advise a foreign entity in violation of 18 U.S.C. 207(f), a former employee engages in an activity on behalf of the United States when he serves:

(*1*) As a representative of the United States pursuant to a specific agreement with the United States to provide representational services involving a fiduciary duty to the United States; or

(*2*) As a witness called by the United States (including a Congressional committee or subcommittee) to testify at a Congressional hearing (even if applicable procedural rules do not require him to declare by oath or affirmation that he will testify truthfully).

(B) A former employee will not be deemed to engage in an activity on behalf of the United States merely because he is performing work funded by the Government, because he is engaging in the activity in response to a contact initiated by the Government, because the Government will derive some benefit from the activity, or because he or the person on whose behalf he is acting may share the same objective as the Government.

Note to paragraph (a)(2)(ii): *See also* § 2641.301(f) concerning the permissibility of testimony under oath, including testimony as an expert witness, when a former employee is called as a witness by the United States.

Example 1 to paragraph (a): An employee of the Department of Labor (DOL) transfers to become an employee of the Pension Benefit Guaranty Corporation (PBGC). The PBGC, a whollyowned Government corporation, is a corporation in which the United States has a proprietary interest. The former DOL employee may press the PBGC's point of view in a meeting with DOL employees concerning an airline bankruptcy case in which he was personally and substantially involved while at the DOL. His communications to the DOL on behalf of the PBGC would be made on behalf of the United States.

Example 2 to paragraph (a): A Federal Transit Administration (FTA) employee recommended against the funding of a certain subway project. After terminating Government service, she is hired by a Congressman as a member of his staff to perform a variety of duties, including miscellaneous services for the Congressman's constituents. The former employee may contact the FTA on behalf of a constituent group as part of her official duties in order to argue for the reversal of the subway funding decision in which she participated while still an employee of the FTA. Her communications to the FTA on behalf of the constituent group would be made on behalf of the United States.

Example 3 to paragraph (a): A Postal Service attorney participated in discussions with the Office of Personnel Management (OPM) concerning a dispute over the mailing of health plan brochures. After terminating Government service, the attorney joins a law firm as a partner. He is assigned by the firm's managing partner to represent the Postal Service pursuant to a contract requiring the firm to provide certain legal services. The former senior employee may represent the Postal Service in meetings with OPM concerning the dispute about the health plan brochures. The former senior employee's suggestions to the Postal Service concerning strategy and his arguments to OPM concerning the dispute would be made on behalf of the United States (even though he is also acting on behalf of his law firm when he performs representational services for the United States). A communication to the Postal Service concerning a disagreement about the law firm's fee, however, would not be made on behalf of the United States.

Example 4 to paragraph (a): A former senior employee of the Food and Drug Administration (FDA), now an employee of a drug company, is called by a Congressional committee to give unsworn testimony concerning the desirability of instituting cost controls in the pharmaceutical industry. The former senior employee may address the committee even though her testimony will unavoidably also be directed to a current employee of the FDA who has also been asked to testify as a member of the same panel of experts. The former employee's communications at the hearing, provided at the request of the United States, would be made on behalf of the United States.

Example 5 to paragraph (a): A National Security Agency (NSA) analyst drafted the specifications for a contract that was awarded to the Secure Data Corporation to develop prototype software for the processing of foreign intelligence information. After terminating Government service, the analyst is hired by the corporation. The former employee may not attempt to persuade NSC officials that the software is in accord with the specifications. Although the development of the software is expected to significantly enhance the processing of foreign intelligence information and the former employee's opinions might be useful to current NSC employees, his communications would not be made on behalf of the United States.

Example 6 to paragraph (a): A senior employee at the Department of the Air Force specialized in issues relating to the effective utilization of personnel. After terminating Government service, the former senior employee is hired by a contractor operating a Federally Funded Research and Development Center (FFRDC). The FFRDC is not a ''Government corporation'' as defined in § 2641.104. The former senior employee may not attempt to convince the Air Force of

the manner in which Air Force funding should be allocated among projects proposed to be undertaken by the FFRDC. Although the work performed by the FFRDC will be determined by the Air Force, may be accomplished at Governmentowned facilities, and will benefit the Government, her communications would not be made on behalf of the United States.

Example 7 to paragraph (a): A Department of Justice (DOJ) attorney represented the United States in a civil enforcement action against a company that had engaged in fraudulent activity. The settlement of the case required that the company correct certain deficiencies in its operating procedures. After terminating Government service, the attorney is hired by the company. When DOJ auditors schedule a meeting with the company's legal staff to review company actions since the settlement, the former employee may not attempt to persuade the auditors that the company is complying with the terms of the settlement. Although the former employee's insights might facilitate the audit, his communications would not be made on behalf of the United States even though the Government's auditors initiated the contact with the former employee.

Note to paragraph (a): *See also* example 9 to paragraph (j) of § 2641.202 and example 1 to paragraph (d) of § 2641.204.

(b) *Exception for acting on behalf of State or local government as elected official.* A former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from engaging in any post-employment activity on behalf of one or more State or local governments, provided the activity is undertaken in carrying out official duties as an elected official of a State or local government.

Example 1 to paragraph (b): A former employee of the Department of Housing and Urban Development (HUD) participated personally and substantially in the evaluation of a grant application from a certain city. After terminating Government service, he was elected mayor of that city. The former employee may contact an Assistant Secretary at HUD to argue that additional funds are due the city under the terms of the grant.

Example 2 to paragraph (b): A former employee of the Federal Highway Administration (FHWA) participated personally and substantially in the decision to provide funding for a bridge across the White River in Arkansas. After terminating Government service, she accepted the Governor's offer to head the highway department in Arkansas. A communication to or appearance before the FHWA concerning the terms of the construction grant would not be made as an elected official of a State or local government.

(c) *Acting on behalf of specified entities.* A former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a communication or appearance on behalf of one or more entities specified in paragraph (c)(1) of this section, provided the communication or appearance is made in carrying out official duties as an employee of a specified entity.

(1) *Specified entities.* For purposes of this paragraph, a specified entity is:

(i) An agency or instrumentality of a *State or local government;*

(ii) A *hospital or medical research organization,* if exempted from taxation under 26 U.S.C. 501(c)(3); or

(iii) An *accredited, degree-granting institution of higher education,* as defined in 20 U.S.C. 1001.

(2) *Employee.* For purposes of this paragraph, the term ''employee'' of a specified entity means a person who has an employee-employer relationship with an entity specified in paragraph (c)(1) of this section. It includes a person who is employed to work part-time for a specified entity. The term excludes an individual performing services for a specified entity as a consultant or independent contractor.

Example 1 to paragraph (c): A senior employee leaves her position at the National Institutes of Health (NIH) and takes a full-time position at the Gene Research Foundation, a tax-exempt organization pursuant to 26 U.S.C. 501(c)(3). As an employee of a 501(c)(3) tax-exempt medical research organization, the former senior employee is not barred by 18 U.S.C. 207(c) from representing the Foundation before the NIH.

Example 2 to paragraph (c): A former senior employee of the Environmental Protection Agency (EPA) joins a law firm in Richmond, Virginia. The firm is hired by the Commonwealth of Virginia to represent it in discussions with the EPA about an environmental impact statement concerning the construction of a highway interchange. The former senior employee's arguments concerning the environmental impact statement would not be made as an employee of the Commonwealth of Virginia.

Example 3 to paragraph (c): A former senior employee becomes an employee of the ABC Association. The ABC Association is a nonprofit organization whose membership consists of a broad representation of State health agencies and senior State health officials, and it performs services from which certain State governments benefit, including collecting information from its members and conveying that information and views to the Federal Government. However, the ABC Association has not been delegated authority by any State government to perform any governmental functions, and it does not operate under the regulatory, financial, or management control of any state government. Therefore, the ABC Association is not an agency or instrumentality of a state government, and the former senior employee may not represent the organization before his former agency within one year after terminating his senior employee position.

(d) *Exception for uncompensated statements based on special knowledge.* A former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a statement based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

(1) *Special knowledge.* A former employee has special knowledge concerning a subject area if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.

(2) *Statement.* A statement for purposes of this paragraph is a communication of facts directly observed by the former employee.

(3) Compensation. Compensation includes any form of remuneration or income that is given in consideration, in whole or in part, for the statement. It does not include the payment of actual and necessary expenses incurred in connection with making the statement.

Example 1 to paragraph (d): The Chairman of the Council of Economic Advisors was personally and substantially involved in discussions with other White House officials concerning the advisability of a three-phase reduction in the capital gains tax. After Government service, the former Chairman affiliates with a nonprofit group that advocates a position on the three-phase capital gains issue that is similar to his own. The former Chairman, who receives no salary from the nonprofit organization, may meet with the current Chairman on the organization's behalf to state what steps had previously been taken by the Council to address the issue. The statement would be permissible even if the nonprofit organization reimbursed the former Chairman for his actual and necessary travel expenses incurred in connection with making the statement.

Example 2 to paragraph (d): A former senior employee becomes a government relations consultant, and he enters into a $5,000 per month retainer agreement with XYZ Corporation for government relations services. He would like to meet with his former agency to discuss a regulatory matter involving his client. Even though he would not be paid by XYZ specifically for this particular meeting, he nevertheless would receive compensation for any statements at the meeting, because of the monthly payments under his standing retainer agreement. Therefore he may not rely on the exemption for uncompensated statements based on special knowledge.

(e) *Exception for furnishing scientific or technological information.* A former employee is not prohibited by 18 U.S.C. 207(a), (c), or (d), or §§ 2641.201, 2641.202, 2641.204, or 2641.205, from making communications, including appearances, solely for the purpose of furnishing scientific or technological information, provided the

communications are made either in accordance with procedures adopted by the agency or agencies to which the communications are directed or the head of such agency or agencies, in consultation with the Director of the Office of Government Ethics, makes a certification published in the **Federal Register**.

(1) *Purpose of information.* A communication made solely for the purpose of furnishing scientific or technological information may be:

(i) Made in connection with a matter that involves an appreciable element of actual or potential dispute;

(ii) Made in connection with an effort to seek a discretionary Government ruling, benefit, approval, or other action; or

(iii) Inherently influential in relation to the matter in dispute or the Government action sought.

(2) *Scientific or technological information.* The former employee must convey information of a scientific or technological character, such as technical or engineering information relating to the natural sciences. The exception does not extend to information associated with a nontechnical discipline such as law, economics, or political science.

(3) *Incidental references or remarks.* Provided the former employee's communication primarily conveys information of a scientific or technological character, the entirety of the communication will be deemed made solely for the purpose of furnishing such information notwithstanding an incidental reference or remark:

(i) Unrelated to the matter to which the post-employment restriction applies;

(ii) Concerning feasibility, risk, cost, speed of implementation, or other considerations when necessary to appreciate the practical significance of the basic scientific or technological information provided; or

(iii) Intended to facilitate the furnishing of scientific or technological information, such as those references or remarks necessary to determine the kind and form of information required or the adequacy of information already supplied.

Example 1 to paragraph (e)(3): After terminating Government service, a former senior employee at the National Security Agency (NSA) accepts a position as a senior manager at a firm specializing in the development of advanced security systems. The former senior employee and another firm employee place a conference call to a current NSA employee to follow up on an earlier discussion in which the firm had sought funding from the NSA to develop a certain proposed security system. After the other firm employee explains the scientific principles underlying the proposed system, the former employee may not state the system's expected cost. Her communication would not primarily convey information of a scientific or technological character.

Example 2 to paragraph (e)(3): If, in the previous example, the former senior employee explained the scientific principles underlying the proposed system, she could also have stated its expected cost as an incidental reference or remark.

(4) *Communications made under procedures acceptable to the agency.* (i) An agency may adopt such procedures as are acceptable to it, specifying conditions under which former Government employees may make communications solely for the purpose of furnishing scientific or technological information, in light of the agency's particular programs and needs. In promulgating such procedures, an agency may consider, for example, one or more of the following:

(A) Requiring that the former employee specifically invoke the exception prior to making a communication (or series of communications);

(B) Requiring that the designated agency ethics official for the agency to which the communication is directed (or other agency designee) be informed when the exception is used;

(C) Limiting communications to certain formats which are least conducive to the use of personal influence;

(D) Segregating, to the extent possible, meetings and presentations involving technical substance from those involving other aspects of the matter; or

(E) Employing more restrictive practices in relation to communications concerning specified categories of matters or specified aspects of a matter, such as in relation to the pre-award as distinguished from the post-award phase of a procurement.

(ii) The Director of the Office of Government Ethics may review any agency implementation of this exception in connection with OGE's executive branch ethics program oversight responsibilities. *See* 5 CFR part 2638.

Example 1 to paragraph (e)(4): A Marine Corps engineer participates personally and substantially in drafting the specifications for a new assault rifle. After terminating Government service, he accepts a job with the company that was awarded the contract to produce the rifle. Provided he acts in accordance with agency procedures, he may accompany the President of the company to a meeting with Marine Corps employees and report the results of a series of metallurgical tests. These results support the company's argument that it has complied with a particular specification. He may do so even though the meeting was expected to be and is, in fact, a contentious one in which the company's testing methods are at issue. He may not, however, present the company's argument that an advance payment is due the company under the terms of the contract since this would not be a mere incidental reference or remark within the meaning of paragraph (e)(3) of this section.

(5) *Certification for expertise in technical discipline.* A certification issued in accordance with this section shall be effective on the date it is executed (unless a later date is specified), provided that it is transmitted to the **Federal Register** for publication.

(i) *Criteria for issuance.* A certification issued in accordance with this section may not broaden the scope of the exception and may be issued only when:

(A) The former employee has outstanding qualifications in a scientific, technological, or other technical discipline (involving engineering or other natural sciences as distinguished from a nontechnical discipline such as law, economics, or political science);

(B) The matter requires the use of such qualifications; and

(C) The national interest would be served by the former employee's participation.

(ii) *Submission of requests.* The individual wishing to make the communication shall forward a written request to the head of the agency to which the communications would be directed. Any such request shall address the criteria set forth in paragraph (e)(5)(i) of this section.

(iii) *Issuance.* The head of the agency to which the communications would be directed may, upon finding that the criteria specified in paragraph (e)(5)(i) of this section are satisfied, approve the request by executing a certification, which shall be published in the **Federal Register**. A copy of the certification shall be forwarded to the affected individual. The head of the agency shall, prior to execution of the certification, furnish a draft copy of the certification to the Director of the Office of Government Ethics and consider the Director's comments, if any, in relation to the draft. The certification shall specify:

(A) The name of the former employee;

(B) The Government position or positions held by the former employee during his most recent period of Government service;

(C) The identity of the employer or other person on behalf of which the former employee will be acting;

(D) The restriction or restrictions to which the certification shall apply;

(E) Any limitations imposed by the agency head (or deputy or acting head) with respect to the scope of the certification; and

(F) The basis for finding that the criteria specified in paragraph (e)(5)(i) of this section are satisfied, specifically including a description of the matter and the communications that will be permissible or, if relevant, a statement that such information is protected from disclosure by statute.

(iv) *Copy to Office of Government Ethics.* Once published, the agency shall provide the Director of the Office of Government Ethics with a copy of the certification as published in the **Federal Register**.

(v) *Revocation.* The agency head may revoke a certification and shall forward a written notice of the revocation to the former employee and to the OGE Director. Revocation of a certification shall be effective on the date specified in the notice revoking the certification.

(f) *Exception for giving testimony under oath or making statements required to be made under penalty of perjury.* Subject to the limitation described in paragraph (f)(2) of this section concerning expert witness testimony, a former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from giving testimony under oath or making a statement required to be made under penalty of perjury.

(1) *Testimony under oath.* Testimony under oath is evidence delivered by a witness either orally or in writing, including deposition testimony and written affidavits, in connection with a judicial, quasi-judicial, administrative, or other legally recognized proceeding in which applicable procedural rules require a witness to declare by oath or affirmation that he will testify truthfully.

(2) *Limitation on exception for service as an expert witness.* The exception described in paragraph (f)(1) of this section does not negate the bar of 18 U.S.C. 207(a)(1), or § 2641.201, to a former employee serving as an expert witness; where the bar of section 207(a)(1) applies, a former employee may not serve as an expert witness except:

(i) If he is called as a witness by the United States; or

(ii) By court order. For this purpose, a subpoena is not a court order, nor is an order merely qualifying an individual to testify as an expert witness.

(3) *Statements made under penalty of perjury.* A former employee may make any statement required to be made under penalty of perjury, except that he may not:

(i) Submit a pleading, application, or other document as an attorney or other representative; or

(ii) Serve as an expert witness where the bar of 18 U.S.C. 207(a)(1) applies, except as provided in paragraph (f)(2) of this section.

Note to paragraph (f): Whether compensation of a witness is appropriate is not addressed by 18 U.S.C. 207. However, 18 U.S.C. 201 may prohibit individuals from receiving compensation for testifying under oath in certain forums except as authorized by 18 U.S.C. 201(d). Note also that there may be statutory or other bars on the disclosure by a current or former employee of information from the agency's files or acquired in connection with the individual's employment with the Government; a former employee's agency may have promulgated procedures to be followed with respect to the production or disclosure of such information.

Example 1 to paragraph (f): A former employee is subpoenaed to testify in a case pending in a United States district court concerning events at the agency she observed while she was performing her official duties with the Government. She is not prohibited by 18 U.S.C. 207 from testifying as a fact witness in the case.

Example 2 to paragraph (f): An employee was removed from service by his agency in connection with a series of incidents where the employee was absent without leave or was unable to perform his duties because he appeared to be intoxicated. The employee's supervisor, who had assisted the agency in handling the issues associated with the removal, subsequently left Government. In the ensuing case in Federal court between the employee who had been removed and his agency over whether he had been discriminated against because of his disabling alcoholism, his former supervisor was asked whether on certain occasions the employee had been intoxicated on the job and unable to perform his assigned duties. Opposing counsel objected to the question on the basis that the question required expert testimony and the witness had not been qualified as an expert. The judge overruled the objection on the basis that the witness would not be providing expert testimony but opinions or inferences which are rationally based on his perception and helpful to a clear understanding of his testimony or the determination of a fact in issue. The former employee may provide the requested testimony without violating 18 U.S.C. 207.

Example 3 to paragraph (f): A former senior employee of the Environmental Protection Agency (EPA) is a recognized expert concerning compliance with Clean Air Act requirements. Within one year after terminating Government service, she is retained by a utility company that is the defendant in a lawsuit filed against it by the EPA. While the matter had been pending while she was with the agency, she had not worked on the matter. After the court rules that she is qualified to testify as an expert, the former senior employee may offer her sworn opinion that the utility company's practices are in compliance with Clean Air Act requirements. She may do so although she would otherwise have been barred by 18 U.S.C. 207(c) from making the communication to the EPA.

Example 4 to paragraph (f): In the previous example, an EPA scientist served as a member of the EPA investigatory team that compiled a report concerning the utility company's practices during the discovery stage of the lawsuit. She later terminated Government service to join a consulting firm and is hired by the utility company to assist it in its defense. She may not, without a court order, serve as an expert witness for the company in the matter since she is barred by 18 U.S.C. 207(a)(1) from making the communication to the EPA. On application by the utility company for a court order permitting her service as an expert witness, the court found that there were no extraordinary circumstances that would justify overriding the specific statutory bar to such testimony. Such extraordinary circumstances might be where no other equivalent expert testimony can be obtained and an employee's prior involvement in the matter would not cause her testimony to have an undue influence on proceedings. Without such extraordinary circumstances, ordering such expert witness testimony would undermine the bar on such testimony.

(g) *Exception for representing certain candidates or political organizations.* Except as provided in paragraph (g)(2) of this section, a former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a communication or appearance on behalf of a candidate in his capacity as a candidate or an entity specified in paragraphs (g)(1)(ii) through (g)(1)(vi) of this section.

(1) *Specified persons or entities.* For purposes of this paragraph (g), the specified persons or entities are:

(i) A *candidate.* A candidate means any person who seeks nomination for election, or election to, Federal or State office or who has authorized others to explore on his own behalf the possibility of seeking nomination for election, or election to, Federal or State office;

(ii) An *authorized committee.* An authorized committee means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination or election of the candidate or to explore the possibility of seeking the nomination or election of the candidate. The term does not include a committee that receives contributions or makes expenditures to promote more than one candidate;

(iii) A *national committee.* A national committee means the organization

which, under the bylaws of a political party, is responsible for the day-to-day operation of the political party at the national level;

(iv) A *national Federal campaign committee.* A national Federal campaign committee means an organization which, under the bylaws of a political party, is established primarily to provide assistance at the national level to candidates nominated by the party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) A *State committee.* A State committee means the organization which, under the bylaws of a political party, is responsible for the day-to-day operation of the political party at the State level; or

(vi) A *political party.* A political party means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of the association, committee, or organization.

(2) *Limitations.* The exception in this paragraph (g) shall not apply if the communication or appearance:

(i) Is made at a time the former senior or very senior employee is employed by any person or entity other than:

(A) A person or entity specified in paragraph (g)(1) of this section; or

(B) A person or entity who exclusively represents, aids, or advises persons or entities described in paragraph (g)(1) of this section;

(ii) Is made other than solely on behalf of one or more persons or entities specified in paragraph (g)(1) or (g)(2)(i)(B) of this section; or

(iii) Is made to or before the Federal Election Commission by a former senior or very senior employee of the Federal Election Commission.

Example 1 to paragraph (g):

The former Counsel to the President becomes the full-time head of the President's re-election committee. The former Counsel may, within one year of terminating his very senior employee position, represent the re-election committee to the White House travel office in discussions regarding the appropriate amounts of reimbursements by the committee of political travel costs of the President.

Example 2 to paragraph (g): The former U.S. Attorney General is asked by a candidate running for Governor of Alabama to contact the Chairman of the Federal Trade Commission (a position listed in 5 U.S.C. 5314) to seek the dismissal of a pending enforcement action involving the candidate's family business. The former very senior employee's communication to the Chairman would not be made on behalf of the candidate in his capacity as a candidate and, thus, would be barred by 18 U.S.C. 207(d).

Example 3 to paragraph (g): In the previous example, the former Attorney General could contact the Commissioner of Internal Revenue (a position listed in 5 U.S.C. 5314) to urge the review of a tax ruling affecting Alabama's Republican Party since the communication would be made on behalf of a State committee.

Example 4 to paragraph (g): The former Assistant Secretary for Legislative and Intergovernmental Affairs at the Department of Commerce is hired as a consultant by a company that provides advisory services to political candidates and senior executives in private industry. Her only client is a candidate for the U.S. Senate. The former senior employee may not contact the Deputy Secretary of Commerce within one year of her termination from the Department to request that the Deputy Secretary give an official speech in which he would express support for legislation proposed by the candidate. The communication would be prohibited by 18 U.S.C. 207(c) because it would be made when the former senior employee was employed by an entity that did not exclusively represent, aid, or advise persons or entities specified in paragraph (g)(1) of this section.

(h) *Waiver for acting on behalf of international organization.* (1) The Secretary of State may grant a former employee an individual waiver of one or more of the restrictions in 18 U.S.C. 207 where the employee would act on behalf of an international organization in which the United States participates. The Secretary of State must certify in advance that the proposed activity is in the interests of the United States.

(2) An employee who is detailed under 5 U.S.C. 3343 to an international organization remains an employee of his agency. In contrast, an employee who transfers under 5 U.S.C. 3581–3584 to an international organization is a former employee of his agency.

(i) *Waiver for re-employment by Government-owned contractor operated entity.* The President may grant a waiver of one or more of the restrictions in 18 U.S.C. 207 to eligible employees upon the determination and certification in writing that the waiver is in the public interest and the services of the individual are critically needed for the benefit of the Federal Government. Upon the issuance of a waiver pursuant to this paragraph, the restriction or restrictions waived will not apply to a former employee acting as an employee of the same Government-owned, contractor operated entity with which he was employed immediately before the period of Government service during which the waiver was granted. If the individual was employed by the Lawrence Livermore National Laboratory, the Los Alamos National Laboratory, or the Sandia National Laboratory immediately before the person's Federal Government employment began, the restriction or restrictions waived shall not apply to a former employee acting as an employee of any one of those three national laboratories after the former employee's Government service has terminated.

(1) *Eligible employees.* Any current civilian employee of the executive branch, other than an employee serving in the Executive Office of the President, who served as an officer or employee at a Government-owned, contractor operated entity immediately before he became a Government employee. A total of no more than 25 current employees shall hold waivers at any one time.

(2) *Issuance.* The President may not delegate the authority to issue waivers under this paragraph. If the President issues a waiver, a certification shall be published in the **Federal Register** and shall identify:

(i) The employee covered by the waiver by name and position; and

(ii) The reasons for granting the waiver.

(3) *Copy to Office of Government Ethics.* A copy of the certification shall be provided to the Director of the Office of Government Ethics.

(4) *Effective date.* A waiver issued under this section shall be effective on the date the certification is published in the **Federal Register**.

(5) *Reports.* Each former employee holding a waiver must submit semiannual reports, for a period of two years after terminating Government service, to the President and the OGE Director.

(i) *Submission.* The reports shall be submitted:

(A) Not later than six months and 60 days after the date of the former employee's termination from the period of Government service during which the waiver was granted; and

(B) Not later than 60 days after the end of any successive six-month period.

(ii) *Content.* Each report shall describe all activities undertaken by the former employee during the six-month period that would have been prohibited by 18 U.S.C. 207 but for the waiver.

(iii) *Public availability.* All reports filed with the OGE Director under this paragraph shall be made available for public inspection and copying.

Note to paragraph (i)(5): 18 U.S.C. 207(k)(5)(D) specifies that an individual who is granted a waiver as described in this paragraph is ineligible for appointment in the civil service unless all reports required by that section have been filed.

(6) *Revocation.* A waiver shall be revoked when the recipient of the

waiver fails to file a report required by paragraph (i)(4) of this section, and the recipient of the waiver shall be notified of such revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(j) *Waiver of restrictions of 18 U.S.C. 207(c) and (f) for certain positions.* The Director of the Office of Government Ethics may waive application of the restriction of section 18 U.S.C. 207(c) and § 2641.204, with respect to certain positions or categories of positions. When the restriction of 18 U.S.C. 207(c) has been waived by the Director pursuant to this paragraph, the one-year restriction of 18 U.S.C. 207(f) and § 2641.206 also will not be triggered upon an employee's termination from the position.

(1) *Eligible senior employee positions.* Any position which could be occupied by a senior employee is eligible for a waiver of the 18 U.S.C. 207(c) restriction except the following:

(i) Positions for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule);

(ii) Positions for which occupants are appointed by the President pursuant to 3 U.S.C. 105(a)(2)(B); or

(iii) Positions for which occupants are appointed by the Vice President pursuant to 3 U.S.C. 106(a)(1)(B).

Example 1 to paragraph (j)(1): The head of a department has authority to fix the annual salary for a category of positions administratively at a rate of compensation not in excess of the rate of compensation provided for level IV of the Executive Schedule (5 U.S.C. 5315). He sets a salary level that does not reference any Executive Schedule salary. The level of compensation is not ''specified in'' or ''fixed according to'' the Executive Schedule. If the authority pursuant to which compensation for a position is set instead stated that the position is to be paid at the rate of level IV of the Executive Schedule, the salary for the position would be fixed according to the Executive Schedule.

(2) *Criteria for waiver.* A waiver of restrictions for a position or category of positions shall be based on findings that:

(i) The agency has experienced or is experiencing undue hardship in obtaining qualified personnel to fill such position or positions as shown by relevant factors which may include, but are not limited to:

(A) Vacancy rates;

(B) The payment of a special rate of pay to the incumbent of the position pursuant to specific statutory authority; or

(C) The requirement that the incumbent of the position have outstanding qualifications in a scientific, technological, technical, or other specialized discipline;

(ii) Waiver of the restriction with respect to the position or positions is expected to ameliorate the recruiting difficulties; and

(iii) The granting of the waiver would not create the potential for the use of undue influence or unfair advantage based on past Government service, including the potential for use of such influence or advantage for the benefit of a foreign entity.

(3) *Procedures.* A waiver shall be granted in accordance with the following procedures:

(i) *Agency recommendation.* An agency's designated agency ethics official (DAEO) may, at any time, recommend the waiver of the 18 U.S.C. 207(c) (and section 207(f)) restriction for a position or category of positions by forwarding a written request to the Director addressing the criteria set forth in paragraph (j)(2) of this section. A DAEO may, at any time, request that a current waiver be revoked.

(ii) *Action by Office of Government Ethics.* The Director of the Office of Government Ethics shall promptly provide to the designated agency ethics official a written response to each request for waiver or revocation. The Director shall maintain a listing of positions or categories of positions in appendix A to this part for which the 18 U.S.C. 207(c) restriction has been waived. The Director shall publish notice in the **Federal Register** when revoking a waiver.

(4) *Effective dates.* A waiver shall be effective on the date of the written response to the designated agency ethics official indicating that the request for waiver has been granted. A waiver shall inure to the benefit of the individual who holds the position when the waiver takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the waiver. Revocation of a waiver shall be effective 90 days after the date that the OGE Director publishes notice of the revocation in the **Federal Register**. Individuals who formerly served in a position for which a waiver of restrictions was applicable will not become subject to 18 U.S.C. 207(c) (or section 207(f)) if the waiver is revoked after their termination from the position.

(k) *Miscellaneous statutory exceptions.* Several statutory authorities specifically modify the scope of 18 U.S.C. 207 as it would otherwise apply to a former employee or class of former employees. These authorities include:

(1) 22 U.S.C. 3310(c), permitting employees of the American Institute in Taiwan to represent the Institute notwithstanding 18 U.S.C. 207;

(2) 22 U.S.C. 3613(d), permitting the individual who was Administrator of Panama Canal Commission on the date of its termination to act in carrying out official duties as Administrator of the Panama Canal Authority notwithstanding 18 U.S.C. 207;

(3) 22 U.S.C. 3622(e), permitting an individual who was an employee of the Panama Canal Commission on the date of its termination to act in carrying out official duties on behalf of the Panama Canal Authority;

(4) 25 U.S.C. 450i(j), permitting a former employee who is employed by an Indian tribe to act on behalf of the tribe notwithstanding 18 U.S.C. 207 if the former employee submits notice of any personal and substantial involvement in the matter during Government service;

(5) 38 U.S.C. 5902(d), permitting a former employee who is a retired officer, warrant officer, or enlisted member of the Armed Forces, while not on active duty, to act on behalf of certain claimants notwithstanding 18 U.S.C. 207 if the claim arises under laws administered by the Secretary of Veterans Affairs;

(6) 50 U.S.C. 405(b), permitting a former part-time member of an advisory committee appointed by the Federal Emergency Management Agency, the Central Intelligence Agency, or the National Security Council to engage in conduct notwithstanding 18 U.S.C. 207 except with respect to any particular matter directly involving an agency the former member advised or in which such agency is directly interested; and

(7) 50 U.S.C. app. 463, permitting former employees appointed to certain positions under 50 U.S.C. App. 451 *et seq.* (Military Selective Service Act) to engage in conduct notwithstanding 18 U.S.C. 207.

Note to paragraph (k): Exceptions from 18 U.S.C. 207 may be included in legislation mandating privatization of Governmental entities. *See,* for example, 42 U.S.C. 2297h–3(c), concerning the privatization of the United States Enrichment Corporation.

(l) *Guide to available exceptions and waivers to the prohibitions of 18 U.S.C. 207.* This chart lists the exceptions and waivers set forth in 18 U.S.C. 207 and for each exception and waiver identifies the prohibitions of section 207 excepted or subject to waiver. Detailed guidance on the applicability of the exceptions and waivers is contained in the cross-referenced paragraphs of this section.

SECTION 207 PROHIBITIONS AFFECTED

Exception/Waiver	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)
(1) Acting for the United States, *see* § 2641.301(a)	•	•	•	•	•	•
(2) Elected State or local government official, *see* § 2641.301(b)	•	•	•	•	•	•
(3) Acting for specified entities, *see* § 2641.301(c)				•	•	
(4) Special knowledge, *see* § 2641.301(d)				•	•	
(5) Scientific or technological information, *see* § 2641.301(e)	•	•		•	•	
(6) Testimony, *see* § 2641.301(f)	•	•	•	•	•	•
(7) Acting for a candidate or political party, *see* § 2641.301(g)				•	•	
(8) Acting for an international organization, *see* § 2641.301(h)	•	•	•	•	•	•
(9) Employee of a Government-owned, contractor operated entity, *see* § 2641.301(i)	•	•	•	•	•	•
(10) Waiver for certain positions, *see* § 2641.301(j)				•		•

§ 2641.302 Separate agency components.

(a) *Designation.* For purposes of 18 U.S.C. 207(c) only, and § 2641.204, the Director of the Office of Government Ethics may designate agency ''components'' that are distinct and separate from the ''parent'' agency and from each other. Absent such designation, the representational bar of section 207(c) extends to the whole of the agency in which the former senior employee served. An eligible former senior employee who served in the *parent* agency is not barred by section 207(c) from making communications to or appearances before any employee of any designated component of the parent, but is barred as to any employee of the parent or of any agency or bureau of the parent that has not been designated. An eligible former senior employee who served in a *designated component* of the parent agency is barred from communicating to or making an appearance before any employee of that designated component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

Example 1 to paragraph (a): While employed in the Office of the Secretary of Defense, a former career Senior Executive Service employee was employed in a position for which the rate of basic pay exceeded that payable for level 5 of the Senior Executive Service. He is prohibited from contacting the Secretary of Defense and DOD's Inspector General. However, because eligible under paragraph (b) of this section to benefit from component designation procedures, he is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of the Army. (The Department of the Army is a designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent, DOD. See the listing of DOD components in appendix B to this part.)

Example 2 to paragraph (a): Because eligible under paragraph (b) of this section to benefit from component designation procedures, a former Navy Admiral who last served as the Vice Chief of Naval Operations is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of Defense, the Secretary of the Army, or DOD's Inspector General. He is prohibited from contacting the Secretary of the Navy. (The Department of the Navy is a designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent. *See* the listing of DOD components in appendix B to this part.)

(b) *Eligible former senior employees.* All former senior employees are eligible to benefit from this procedure except those who were senior employees by virtue of having been:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule) (*see* example 1 to paragraph (j)(1) of § 2641.301);

(2) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B); or

(3) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

Example 1 to paragraph (b): A former senior employee who had served as Deputy Commissioner of the Internal Revenue Service is not eligible to benefit from the designation of components for the Department of the Treasury because the position of Deputy Commissioner is listed in 5 U.S.C. 5316, at a rate of pay payable for level V of the Executive Schedule.

(c) *Criteria for designation.* A component designation must be based on findings that:

(1) The component is an agency or bureau, within a parent agency, that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent as shown by relevant factors which may include, but are not limited to:

(i) The component's creation by statute or a statutory reference indicating that it exercises functions which are distinct and separate;

(ii) The component's exercise of distinct and separate subject matter or geographical jurisdiction;

(iii) The degree of supervision exercised by the parent over the component;

(iv) Whether the component exercises responsibilities that cut across organizational lines within the parent;

(v) The size of the component in absolute terms; and

(vi) The size of the component in relation to other agencies or bureaus within the parent.

(2) There exists no potential for the use of undue influence or unfair advantage based on past Government service.

(d) *Subdivision of components.* The Director will not ordinarily designate agencies that are encompassed by or otherwise supervised by an existing designated component.

(e) *Procedures.* Distinct and separate components shall be designated in accordance with the following procedure:

(1) *Agency recommendation.* A designated agency ethics official may, at any time, recommend the designation of

an additional component or the revocation of a current designation by forwarding a written request to the Director of the Office of Government Ethics addressing the criteria set forth in paragraph (c) of this section.

(2) *Agency update.* Designated agency ethics officials shall, by July 1 of each year, forward to the OGE Director a letter stating whether components currently designated should remain designated in light of the criteria set forth in paragraph (c) of this section.

(3) *Action by the Office of Government Ethics.* The Director of the Office of Government Ethics shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official. The Director shall maintain a listing of all designated agency components in appendix B to this part.

(f) *Effective dates.* A component designation shall be effective on the date the rule creating the designation is published in the **Federal Register** and shall be effective as to individuals who terminated senior service either before, on or after that date. Revocation of a component designation shall be effective 90 days after the publication in the **Federal Register** of the rule that revokes the designation, but shall not be effective as to individuals who terminated senior service prior to the expiration of such 90-day period.

(g) *Effect of organizational changes.* (1) If a former senior employee served in an agency with component designations and the agency or a designated component that employed the former senior employee has been significantly altered by organizational changes, the appropriate designated agency ethics official shall determine whether any successor entity is substantially the same as the agency or a designated component that employed the former senior employee. Section 2641.204(g)(2)(iv)(A) through (g)(2)(iv)(C) should be used for guidance in determining how the 18 U.S.C. 207(c) bar applies when an agency or a designated component has been significantly altered.

(2) *Consultation with Office of Government Ethics.* When counseling individuals concerning the applicability of 18 U.S.C. 207(c) subsequent to significant organizational changes, the appropriate designated agency ethics official (DAEO) shall consult with the Office of Government Ethics. When it is determined that appendix B to this part no longer reflects the current organization of a parent agency, the DAEO shall promptly forward recommendations for designations or revocations in accordance with paragraph (e) of this section.

Example 1 to paragraph (g): An eligible former senior employee had served as an engineer in the Agency for Transportation Safety, an agency within Department X primarily focusing on safety issues relating to all forms of transportation. The agency had been designated as a distinct and separate component of Department X by the Director of the Office of Government Ethics. Subsequent to his termination from the position, the functions of the agency are distributed among three other designated components with responsibilities relating to air, sea, and land transportation, respectively. The agency's few remaining programs are absorbed by the parent. As the designated component from which the former senior employee terminated is no longer identifiable as substantially the same entity, the 18 U.S.C. 207(c) bar will not affect him.

Example 2 to paragraph (g): A scientist served in a senior employee position in the Agency for Medical Research, an agency within Department X primarily focusing on cancer research. The agency had been designated as a distinct and separate component of Department X by the Director of the Office of Government Ethics. Subsequent to her termination from the position, the mission of the Agency for Medical Research is narrowed and it is renamed the Agency for Cancer Research. Approximately 20% of the employees of the former agency are transferred to various other parts of the Department to continue their work on medical research unrelated to cancer. The Agency for Cancer Research is determined to be substantially the same entity as the designated component in which she formerly served, and the 18 U.S.C. 207(c) bar applies with respect to the scientist's contacts with employees of the Agency for Cancer Research. She would not be barred from contacting an employee who was among the 20% of employees who were transferred to other parts of the Department.

(h) *Unauthorized designations.* No agency or bureau within the Executive Office of the President may be designated as a separate agency component.

Appendix A to Part 2641—Positions Waived from 18 U.S.C. 207(c) and (f)

Pursuant to the provisions of 18 U.S.C. 207(c)(2)(C) and 5 CFR 2641.301(j), each of the following positions is waived from the provisions of 18 U.S.C. 207(c) and 5 CFR 2641.204, as well as the provisions of 18 U.S.C. 207(f) and 5 CFR 2641.206. All waivers are effective as of the date indicated.

Agency: Department of Justice

Positions: United States Trustee (21) (effective June 2, 1994).

Agency: Securities and Exchange Commission

Positions: Solicitor, Office of General Counsel (effective October 29, 1991).

Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following agencies is determined, for purposes of 18 U.S.C. 207(c), and 5 CFR 2641.204, to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce

Components: Bureau of the Census, Bureau of Export Administration (effective January 28, 1992), Economic Development Administration, International Trade Administration, Minority Business Development Administration, National Oceanic and Atmospheric Administration, National Telecommunications and Information Administration, Patent and Trademark Office, Technology Administration (effective January 28, 1992),

Parent: Department of Defense

Components: Department of the Air Force, Department of the Army, Department of the Navy, Defense Information Systems Agency, Defense Intelligence Agency, Defense Logistics Agency, Defense Threat Reduction Agency (effective February 5, 1999), National Imagery and Mapping Agency (effective May 16, 1997), National Reconnaissance Office (effective January 30, 2003), National Security Agency.

Parent: Department of Energy

Component: Federal Energy Regulatory Commission.

Parent: Department of Health and Human Services

Components: Administration on Aging (effective May 16, 1997), Administration for Children and Families (effective January 28, 1992), Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997), Agency for Toxic Substances and Disease Registry (effective May 16, 1997), Centers for Disease Control and Prevention (effective May 16, 1997), Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration), Food and Drug Administration, Health Resources and Services Administration (effective May 16, 1997), Indian Health Service (effective May 16, 1997), National Institutes of Health (effective May 16,

1997), Substance Abuse and Mental Health Services Administration (effective May 16, 1997).

Parent: Department of the Interior

Components [1]: Bureau of Indian Affairs (effective January 28, 1992), Bureau of Land Management (effective January 28, 1992), Bureau of Reclamation (effective January 28, 1992), Minerals Management Service (effective January 28, 1992), National Park Service (effective January 28, 1992), Office of Surface Mining Reclamation and Enforcement (effective January 28, 1992), U.S. Fish and Wildlife Service (effective January 28, 1992), U.S. Geological Survey (effective January 28, 1992).

Parent: Department of Justice

Components: Antitrust Division, Bureau of Prisons (including Federal Prison Industries, Inc.), Civil Division, Civil Rights Division, Community Relations Service, Criminal Division, Drug Enforcement Administration, Environment and Natural Resources Division, Executive Office for United States Attorneys [2] (effective January 28, 1992), Executive Office for United States Trustees [3] (effective January 28, 1992), Federal Bureau of Investigation, Foreign Claims Settlement Commission, Immigration and Naturalization Service, Independent Counsel appointed by the Attorney General, Office of Justice Programs, Office of the Pardon Attorney (effective January 28, 1992), Offices of the United States Attorney (each of 94 offices), Offices of the United States Trustee (each of 21 offices), Tax Division, United States Marshals Service (effective May 16, 1997), United States Parole Commission.

Parent: Department of Labor

Components: Bureau of Labor Statistics, Employment and Training Administration, Employment Standards Administration, Mine Safety and Health Administration, Occupational Safety and Health Administration, Office of Disability Employment Policy (effective January 30, 2003), Pension and Welfare Benefits Administration (effective May 16, 1997).

Parent: Department of State

Component: Foreign Service Grievance Board.

Parent: Department of Transportation

Components: Federal Aviation Administration, Federal Highway Administration, Federal Motor Carrier Safety Administration (effective January 30, 2003), Federal Railroad Administration, Federal Transit Administration, Maritime Administration, National Highway Traffic Safety Administration, Saint Lawrence Seaway Development Corporation, Surface Transportation Board (effective May 16, 1997), Transportation Security Administration (effective January 30, 2003), United States Coast Guard.

Parent: Department of the Treasury

Components: Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Bureau of the Mint, Bureau of the Public Debt, Comptroller of the Currency, Federal Law Enforcement Training Center, Financial Crimes Enforcement Center (FinCEN) (effective January 30, 2003), Financial Management Service, Internal Revenue Service, Office of Thrift Supervision, United States Customs Service, United States Secret Service.

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[1] All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

Federal Register

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Part III

Department of Labor

Solicitation of Nominations for The Secretary of Labor's New Freedom Initiative Award; Notice

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Number 1230–0002]

Solicitation of Nominations for The Secretary of Labor's New Freedom Initiative Award

The Secretary of Labor's New Freedom Initiative Award presented by Secretary Elaine L. Chao, United States Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210:

1. *Subject:* New Freedom Initiative Award(s).

2. *Purpose:* To outline the eligibility criteria, the nomination process and the administrative procedures for the New Freedom Initiative Award(s), and to solicit New Freedom Initiative Award(s) nominations.

3. *Originator:* Office of Disability Employment Policy (ODEP).

4. *Background:* To encourage the use of public-private partnerships, the Secretary of Labor will present the New Freedom Initiative Award(s). Initiated in 2002, this award is made annually to individual(s), non-profit organization(s), or corporation(s) that have, through programs or activities, demonstrated exemplary and innovative efforts in furthering the employment objectives of President George W. Bush's New Freedom Initiative. *See http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.* By increasing access to assistive technologies, and utilizing innovative training, hiring, and retention strategies, the recipient(s) will have established and instituted comprehensive strategies to enhance the ability of Americans with disabilities to enter and advance within the 21st Century workforce and to participate in daily community life.

5. *Eligibility Criteria:* The following criteria apply to the New Freedom Initiative Award Nominees:

A. The nominees must be individuals, corporations, or non-profit organizations whose activities exemplify the goals of the President's New Freedom Initiative which include the Office of Disability Employment Policy's mission of increasing employment opportunities for youth and adults with disabilities. Nominations may be submitted, however, by other entities with the knowledge and permission of the nominee. Self-nomination is also encouraged.

B. Nominees must have developed and implemented a multi-faceted program directed toward increasing employment opportunities for people with disabilities through increased access to assistive technologies, and use of innovative training, hiring, and retention techniques.

C. Nominees must report any unresolved violations of state or Federal law, as determined by compliance evaluations, complaint investigations, or other Federal inspections and investigations. In addition, the nominee must also report any pending Federal or state enforcement actions, and any corrective actions or consent decrees that have resulted from litigation under laws enforced by the Department of Labor (DOL).

6. *Nomination Submission Requirements:*

A. The single program or multiple programs for which the individual or company is being nominated must demonstrate a commitment to people with disabilities, and clearly show measurable results in terms of significantly enhancing employment opportunities for people with disabilities. The programs or activities may also address such issues as the widening skills gap among persons with disabilities, a diversified 21st Century workforce, and discrimination based on disability.

B. The nomination packages should be limited to only that information relevant to the nominee's program(s). Nomination packages should be no longer than twenty (20) typed pages double-spaced. A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).

C. Nomination packages must include the following for consideration:

1. The nomination package should include an executive summary prepared by or on behalf of the nominee, which clearly identifies the specific program(s) under nomination and fully describes the results achieved.

2. The specific activities, program(s), or establishment for which the nomination is being submitted.

3. Specific data on training, placements, resources expended and other relevant information that will facilitate evaluation of the nominee's submission.

4. A description of how the program(s) and/or activities that are the subject of the nomination have had a positive and measurable impact on the employment of people with disabilities.

5. A data summary on the nominee. See Section 6(D).

D. A data summary on the Nominee will include the following:

1. Name(s) of the individual, organization or corporation being nominated.

2. Full street address, telephone number and e-mail address where applicable.

3. Name of highest ranking official(s) (where appropriate).

4. Name of executive(s) responsible for human resources, equal employment opportunity, and/or disability awareness at nominee's establishment and/or corporate office (where appropriate).

5. Name of parent company (where appropriate).

6. Name, street address, telephone number and email address of CEO or President of parent company (where appropriate).

7. Name, title, street address, telephone number and e-mail address of a contact person.

8. Number of employees at the establishment or corporation being nominated (where appropriate).

9. Name and description of principal program(s) or service(s).

7. *Timing and Acceptable Methods of Submission of Nominations:*

Nomination packages must be submitted to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue, NW., Washington DC 20210 by May 15, 2003. Any application received after 4:45 p.m. EDST on May 15, 2003 will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than the fifth calendar day before May 15, 2003;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to May 15, 2003.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation

''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Disability Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

Confirmation of receipt of your application can be made by contacting Dina Dorich of the Office of Disability Employment Policy, telephone (202) 693–7859; TTY (202) 693–4920 (these are not toll-free numbers), prior to the closing deadline.

8. *The Administrative Review Process:*

A. The ODEP Steering Committee will perform preliminary administrative review to determine the sufficiency of all submitted application packages.

B. An Executive Evaluation Committee made up of representatives appointed by the Secretary of Labor from Department of Labor employees will perform secondary review.

C. The Secretary of Labor will conduct the final review and selections.

9. Other Factors to be Considered During the Administrative Review Process:

A. If a nominee merges with another company during the evaluation process, only that information relative to the nominated company will be evaluated, and the award, if any, will be limited to the nominated company.

B. Prior receipt of this award will not preclude a nominee from being considered for the New Freedom Initiative Award in subsequent years. Programs and activities serving as the basis of a prior award, however, may not be considered as the basis for a subsequent award application.

10. Procedures Following Selection:

A. Awardees will be notified of their selection via the contact person identified in the application package at least six weeks prior to the awards ceremony. Non-selected nominees will also be notified within 45 days of the selection of the awardees.

B. As a precondition to acceptance of the award, the nominee agrees to perform two out of three of the following activities:

1. Submit to ODEP for review a two-minute video of the program(s) or activity(ies) for which it is being recognized within 30 days of notification of award selection;

2. Display an exhibit or showcase of the program(s)/activity(ies)for which it is being recognized at the awards ceremony, with contents of the Display submitted to ODEP for review within 30 days of notification of award selection;

3. Participate in any New Freedom Initiative workshops hosted by ODEP in conjunction with the awards ceremony.

C. Materials developed by the awardees in conjunction with Section 10(B) will be subject to review by the Office of the Solicitor's Division of Legislative and Legal Counsel at the Department of Labor to ensure compliance with applicable ethics standards.

11. *Location:* The awards ceremony will generally be held during the month of October at a location to be determined by the Secretary of Labor.

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We are very interested in your thoughts and suggestions about your experience in preparing and filing this nomination packet for the Department of Labor's New Freedom Initiative Award. Your comments will be very useful to the Office of Disability Employment Policy in making improvements in our solicitation for nominations for this award in subsequent years. All comments are strictly voluntary and strictly private. We would appreciate your taking a few minutes to tell us—for example'' whether you thought the instructions were sufficiently clear; what you liked or disliked; what worked or didn't work; whether it satisfied your need for information or if it didn't, or anything else that you think is important for us to know. Your comments will be most helpful if you can be very specific in relating your experience.

We value your comments, and would really like to hear from you. Please send any comments you have to Dina Dorich at *dorich-bernadine@dol.gov* or via mail to the Office of Disability Employment Policy, Room S–1303, 200 Constitution Avenue NW., Washington DC 20210. Thank you.

Signed at Washington, DC, this 11th date of February, 2003.

W. Roy Grizzard,

Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 03–3833 Filed 2–14–03; 8:45 am]

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H.R. 16/P.L. 108–6

To authorize salary adjustments for Justices and judges of the United States for fiscal year 2003. (Feb. 13, 2003; 117 Stat. 10)

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400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–048–00016–0)	58.00	Jan. 1, 2002
1600–1899	(869–048–00017–8)	61.00	Jan. 1, 2002
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–048–00021–6)	46.00	Jan. 1, 2002
8	(869–048–00022–4)	58.00	Jan. 1, 2002
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–048–00024–1)	56.00	Jan. 1, 2002
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–048–00026–7)	56.00	Jan. 1, 2002
200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–048–00030–5)	30.00	Jan. 1, 2002
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–048–00033–0)	45.00	Jan. 1, 2002
500–599	(869–048–00034–8)	42.00	Jan. 1, 2002
600–End	(869–048–00035–6)	61.00	Jan. 1, 2002
13	(869–048–00036–4)	47.00	Jan. 1, 2002
14 Parts:			
1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–048–00039–9)	29.00	Jan. 1, 2002
200–1199	(869–048–00040–2)	47.00	Jan. 1, 2002
1200–End	(869–048–00041–1)	41.00	Jan. 1, 2002
15 Parts:			
0–299	(869–048–00042–9)	37.00	Jan. 1, 2002
300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
0–999	(869–048–00045–3)	47.00	Jan. 1, 2002
1000–End	(869–048–00046–1)	57.00	Jan. 1, 2002
17 Parts:			
1–199	(869–048–00048–8)	47.00	Apr. 1, 2002
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–048–00051–8)	59.00	Apr. 1, 2002
400–End	(869–048–00052–6)	24.00	Apr. 1, 2002
19 Parts:			
1–140	(869–048–00053–4)	57.00	Apr. 1, 2002
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–048–00058–5)	60.00	Apr. 1, 2002
21 Parts:			
1–99	(869–048–00059–3)	39.00	Apr. 1, 2002
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1–1.60	(869–048–00077–1)	45.00	Apr. 1, 2002
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–048–00081–0)	60.00	Apr. 1, 2002
§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
§§ 1.501–1.640	(869–048–00083–6)	44.00	[6] Apr. 1, 2002
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5] Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869–048–00098–4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
*100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
*200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
*1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
*18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.